HE JAMES SPRUNT STUDIES IN HISTORY
AND POLITICAL SCIENCE

blished under the Direction of the Departments of History and Political Science
of the University of North Carolina

VOLUME 37

Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism

By

MALCOLM COOK McMILLAN

CHAPEL HILL
THE UNIVERSITY OF NORTH CAROLINA PRESS
1955

THE JAMES SPRUNT STUDIES IN HISTORY AND POLITICAL SCIENCE

No. 1. Personnel of the Convention of 1861. By John Gilchrist McCormick
Legislation of the Convention of 1861. By Kemp P. Battle. } (Out of print.)

No. 2. The Congressional Career of Nathaniel Macon. By Edwin Mood Wilson. (Out of print.)

No. 3. The Letters of Nathaniel Macon, John Steele, and William Barry Grove, with Notes. By Kemp P. Battle. (Out of print.)

No. 4. Letters and Documents Relating to the Early History of the Lower Cape Fear, with Introduction and Notes. By Kemp P. Battle. (Out of print.)

No. 5. Minutes of the Kehukey Association, with Introduction and Notes. By Kemp P. Battle. (Out of print.)

No. 6. Diary of a Geological Tour by Elisha Mitchell in 1827 and 1828, with Introduction and Notes. By Kemp P. Battle.

No. 7. William Richardson Davie: A Memoir. By J. G. de Roulhac Hamilton.
Letters of William Richardson Davie, with Notes. By Kemp P. Battle.

No. 8. The Provincial Council and Committees of Safety in North Carolina. By Bessie Lewis Whitaker.

Vol. 9, No. 1. The Society for the Propagation of the Gospel in the Province of North Carolina. By D. D. Oliver.
Correspondence of John Rust Eaton. Edited by J. G. de Roulhac Hamilton.

Vol. 9, No. 2. Federalism in North Carolina. By Henry M. Wagstaff.
Letters of William Barry Grove. Edited by Henry M. Wagstaff.

Vol. 10, No. 1. Benjamin Sherwood Hedrick. By J. G. de Roulhac Hamilton.

Vol. 10, No. 2. Bartlett Yancey. By George A. Anderson.
The Political and Professional Career of Bartlett Yancey. By J. G. de Roulhac Hamilton.
Letters to Bartlett Yancey.

Vol. 11, No. 1. County Government in Colonial North Carolina. By W. C. Guess.

Vol. 11, No. 2. The North Carolina Constitution of 1776, and Its Makers. By Frank Nash.
The German Settlers of Lincoln County and Western North Carolina. By Joseph R. Nixon.

Vol. 12, No. 1. The Governor, Council, and Assembly in Royal North Carolina. By C. S. Cooke.
Land Tenure in Proprietary North Carolina. By L. N. Morgan.

Vol. 12, No. 2. The North Carolina Indians. By James Hall Rand.

Vol. 13, No. 1. The Granville District. By E. Merton Coulter.
The North Carolina Colonial Bar. By E. H. Alderman.

Vol. 13, No. 2. The Harrington Letters. Edited by H. M. Wagstaff.

Vol. 14, No. 1. The Harris Letters. Edited by H. M. Wagstaff.

Vol. 14, No. 2. Some Colonial History of Beaufort County. By F. H. Cooper.

Vol. 15, Nos. 1 and 2. Party Politics in North Carolina, 1835-1860. By J. G. de Roulhac Hamilton.

Vol. 16, No. 1. A Colonial History of Rowan County, North Carolina. By S. J. Ervin. (Out of print.)

Vol. 16, No. 2. The Diary of Bartlett Yancey Malone. Edited by Wm. Whatley Pierson, Jr.
The Provincial Agents of North Carolina. By Samuel James Ervin, Jr.

Vol. 17, No. 1. The Free Negro in North Carolina. By R. H. Taylor.
Some Colonial History of Craven County, North Carolina. By Francis H. Cooper.

Vol. 17, No. 2. Journal of a Tour of North Carolina by William Attmore, 1787. Edited by Lida Tunstall Rodman.

Vol. 18, Nos. 1 and 2. Slaveholding in North Carolina: An Economic View. By Rosser Howard Taylor.

Vol. 19, No. 1. Present Status of Modern European History in the United States. By Chester Penn Higby.

(Continued inside back cover)

THE
JAMES SPRUNT STUDIES IN HISTORY AND POLITICAL SCIENCE

Published under the Direction of
the Departments of History and Political Science
of the University of North Carolina

VOLUME 37

Editors

Fletcher M. Green, Chairman
William Whatley Pierson
James E. King
Keener C. Frazer
J. Carlyle Sitterson

Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism

By

MALCOLM COOK McMILLAN
Research Professor of History
Alabama Polytechnic Institute

CHAPEL HILL

THE UNIVERSITY OF NORTH CAROLINA PRESS

1955

Copyright, 1955, by
THE UNIVERSITY OF NORTH CAROLINA PRESS

Printed in the United States of America
The Seeman Printery, Inc.
Durham, N. C.

To the Memory of My Brother
WILLIAM ARCHIE McMILLAN

Digitized by the Internet Archive
in 2026

https://archive.org/details/james-sprunt-studies-history_1955_37

PREFACE

The chief objective in writing this volume has been to record the history of the origin and growth of Alabama's six constitutions. Although many books have been written on the history of the Constitution of the United States, few studies have been made of the history of the constitutions of one of the forty-eight states. This volume is an attempt to fill the need for a history of the constitutions of the state of Alabama. All six constitutional conventions and constitutions are studied in their historical setting. Each is related to existing public opinion, and to the political, economic, and social history of the state. A study of the judicial interpretation of Alabama's constitutions has not been attempted. Only when judicial decisions can be related to public demand for constitutional change do they become essential to the plan of the book.

A constitutional history of Alabama or any other state is not merely state and local history. As one studies the changing constitution of Alabama and compares it with those of other states, it becomes apparent that constitutional development was an evolutionary process, each state borrowing, adding to, and building on what others had done. Since Alabama's history, constitutional needs, and problems were common to the South, a history of its constitutions is also a case study in Southern constitutional development. But this borrowing and contributing process also crossed sectional lines. The constitutions of the Midwest made a lasting imprint on the Alabama constitution during the Reconstruction period.

The Northwest Ordinance served as a constitution for Alabama during the territorial period as it did for other states. But from 1819 to 1901, constitution making in Alabama was a never-ending process. In these eighty-two years the state held six conventions, or an average of one every fourteen years. The Civil War and its aftermath precipitated a series of crises which brought four conventions in fifteen years. Each of these constitutions grew out of the conditions of the time. Yet not one was made entirely new at any time, and each can be thoroughly understood only when studied in relation to the history of the state, the South, and the United States. The result of past history, experience, and practice in government is embodied in every article. Alabama's first constitution was the product of constitution making in the older states, frontier influences, and the state's territorial history. Later constitutions were the result of equally significant historical causes. The presence of the Negro in large numbers has been the most important factor in the

184724

constitutional history of Alabama. No major constitutional issue has faced the state since 1819 that has not been decided largely in the light of the presence of the Negro. Scarcely less important has been the concentration of this Negro population in the rich agricultural area of South-Central Alabama, with very few Negroes in the hills of North Alabama. This uneven distribution of the Negro, together with geographic and economic factors on which it is based, has resulted in an intense sectionalism, reflected in every constitutional convention in the state's history. The controversy in the convention of 1819 over whether to adopt the "white basis" or the "federal ratio" for apportionment in the state legislature began a sectional struggle between North and South Alabama which has lasted to this day. The Negro became an even larger factor in the life of the state after his emancipation. The whole population basis of apportionment and Negro suffrage decisions of the Radical period, which favored South Alabama, intensified the sectional struggle within the state. Both became bitter constitutional issues in the post-bellum era. This book is thus a study of politics, the Negro, and sectionalism as reflected in Alabama's conventions and constitutions.

I wish to thank all who have aided me in bringing this volume to completion. Dr. Fletcher M. Green, Kenan Professor of History at the University of North Carolina, read the manuscript, offered invaluable suggestions, and has inspired and guided the author in preparation of the study for publication. The courteous assistance of librarians, especially at the Library of Congress, the University of North Carolina, Duke University, Birmingham Public Library, University of Alabama, and Alabama Polytechnic Institute is gratefully acknowledged. I also wish to thank Mr. Peter Brannon, Miss Frances Hails, and Mrs. Mary Livingston Aiken of the Alabama Department of Archives and History, for placing much valuable material at my disposal. The author is indebted to Dr. A. W. Reynolds and Dr. Jack E. Kendrick of Alabama Polytechnic Institute and Dr. W. T. Jordan of Florida State University, all of whom read the manuscript and made helpful suggestions. For first arousing my interest in Alabama history, I owe much to Dr. A. B. Moore and Dr. Charles G. Summersell of the University of Alabama. Dorothy Dismukes McMillan, my wife, read the manuscript and gave her very valuable assistance in the whole undertaking.

M. C. M.

Auburn, Alabama
March, 1955

CONTENTS

Page
Preface vii
I. The Mississippi Territorial Stage 3
II. The Alabama Territory 16
III. The Alabama Constitution of 1819 30
IV. Judicial Tenure, Biennial Sessions, and Removal of the Capital Amendments, 1819-1846 47
V. Popular Election of Judges and Other Proposed Constitutional Changes before 1861 64
VI. The Secession Convention of 1861 76
VII. Reorganization Following the War 90
VIII. The Reconstruction Convention and the Suffrage 110
IX. General Provisions of the Reconstruction Constitution 134
X. Ratification of the Constitution of 1868 151
XI. The Movement for a Convention in 1875 175
XII. The Bourbon Convention and Constitution of 1875 189
XIII. Ratification of the Constitution of 1875 211
XIV. The Background for Suffrage Revision, 1875-1901 217
XV. Demands for General Revision of Alabama's Constitution of Prohibition 233
XVI. Alabama Politics and the Movement for a Convention in 1901 249
XVII. The Convention of 1901: Suffrage Plans 263
XVIII. The Great Debate: Suffrage and Representation 283
XIX. General Constitutional Revision 310
XX. Ratification and Limited Suffrage under the New Constitution 340
XXI. Constitutional Trends in Alabama in the Nineteenth Century: A Summary 360
Bibliography 371
Index 385

Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism

CHAPTER I

THE MISSISSIPPI TERRITORIAL STAGE

The Mississippi Territory, as originally created by act of Congress in 1798, included all the territory now in Alabama and Mississippi north of 31° and south of 32° 28′. After Spain withdrew from this area under the terms of the Treaty of 1795, Congress hastened to organize the territory in order to assert the sovereignty of the United States. In 1804, following Georgia's cession of her western lands to the federal government, the territory was increased by the addition of that area now in Alabama and Mississippi north of 32° 28′. This more than doubled the size of the territory. In 1812, when Congress added the Mobile district of West Florida, the limits of the territory reached completion.

The act creating the Mississippi Territory in 1798 directed the President of the United States to establish therein a "government in all respects similar to that now exercised in the Territory northwest of the Ohio," excepting the clauses forbidding slavery.[1] In a very real sense the Northwest Ordinance served as a constitution for the Mississippi, Alabama, and all other territories of the United States. Its bill of rights, framework of government, and stages of territorial development became integral parts of the government of every territory organized after its passage in 1787. The government was to be carried on by a governor, a secretary, and three judges appointed by the President and confirmed by the Senate. Whenever the district had five thousand male inhabitants, the landowners could choose a House of Representatives. The House of Representatives would nominate ten men from whom the President would choose five to act as a legislative council.[2] Modeled to a great extent on the British system of the colonial period, the Ordinance nevertheless made improvements in that system. A territorial delegate (the colonial agent of the British period) was given a seat in Congress although not a vote. Instead of holding the territories in permanent subordination, it was provided that when the population reached sixty thousand the territory would be granted statehood on terms of equality with the original states.

---

[1] *U. S. Statutes at Large,* I, 549-550. In the House of Representatives, George Thatcher of Massachusetts moved to exclude slavery from the Mississippi Territory, but only twelve representatives voted for exclusion. See *Annals of Congress,* 5 Cong., 1 sess., 1306-1312.

[2] In August, 1789, Congress passed an act to make the Northwest Ordinance congruent with the Constitution. The law authorized the President with the consent of the Senate to appoint all the territorial officers which "Congress assembled" was given power to appoint in the original act. The President was also given power to remove these officials with the exception of the judges. The act further provided that in the absence of the governor the secretary would become acting governor of the territory. *U. S. Statutes at Large,* I, 50-53.

Winthrop Sargent of Massachusetts, a graduate of Harvard College and a major in the American Revolutionary army, was appointed governor of the new territory by President John Adams.[3] Previously, Sargent had been secretary of the Northwest Territory and had acted as governor during the long absences of Governor Arthur St. Clair. The organization act provided that the governor with the three judges, or a majority of them, were "to adopt and publish in the district, such laws of the original states, civil and criminal, as may be necessary and best suited to the circumstances." After reaching the Territory, Governor Sargent and the three judges (Peter Bryan Bruin, William McGuire, and Daniel Tilton) drew up a code of laws.[4] As the codes of none of the states were available in the Territory, laws of the Northwest Territory were copied. Unaccustomed to law and wishing to make their own laws, settlers attacked "Sargent's Code" in grand jury presentments and mass meetings.[5] They charged that it was unconstitutional because it had not been taken from the codes of older states but had been "enacted" by the governor and judges.[6] They maintained that the code took away basic freedoms and subjected the inhabitants to exhorbitant fees and arbitrary taxation. Political dissatisfaction, under the leadership of Cato West and Anthony Hutchins, increased in intensity.[7] Sargent was a Federalist; most of the people of the Territory were Jeffersonian Republicans and determined to oppose Sargent's administration. Sargent's opponents sent an agent, Narsworthy Hunter, to lay their complaints before Congress. The petitions, which he presented to Congress and the President, brought congressional action. Congress considered repealing the laws,[8] but finally decided to advance the Territory to the second stage of development under the Northwest Ordinance—that is to give the people a legislative assembly so that they could make their own laws.[9] The first election on the fourth Monday of July, 1800, resulted in a victory for the opponents of Governor Sargent. Cato West and Anthony Hutchins were both elected to the House of Representatives, from which point they now officially opposed the governor.[10] The following year, Thomas Jefferson became President and decided the controversy against the governor by refusing to re-appoint him for another term. William C. C. Claiborne, a Republican, was appointed to the post. However, in 1804, Claiborne was made governor of the newly organized Territory of Orleans. Cato West, territorial secretary, became acting governor of the Mississippi Territory until 1805, when Robert Williams of North Carolina was appointed governor. David Holmes of Virginia succeeded Williams in 1809 and remained as governor throughout the remainder of the Mississippi Territorial period.

---

[3] President Adams first nominated George Mathews, but withdrew his name when it became apparent the Senate would not confirm him because as Governor of Georgia he had signed the Yazoo Act. Letter of Secretary of State to George Mathews, May 8, 1798, Clarence Edwin Carter (ed.), *Territorial Papers of the United States, The Territory of Mississippi,* V, 31. Hereinafter cited as *Territorial Papers.*

[4] *Original Laws of the Mississippi Territory enacted 1799-1800 by Governor Winthrop Sargent and the Territorial Judges.* Prepared by the Historical Records Survey, Works Progress Administration. (Jackson, Mississippi) 1939.

[5] Presentments of the Grand Jury of Adams County, June 6, 1799, *Territorial Papers,* V, 63; Presentments of the Grand Jury of Pickering County, June 17, 1799, *ibid.,* V, 66; Committee of the Inhabitants to Governor Sargent and Judges McGuire and Bruin, *ibid.,* V, 77-78; Petition to Congress by Committee of Inhabitants, October 2, 1799, *ibid.,* V, 83-85; Committee of Inhabitants to Governor Sargent and Judges McGuire and Bruin, October 21, 1799, *ibid.,* V, 87-89; Charges against Governor Sargent, May 28, 1800, *ibid.,* V, 99-103.

[6] These laws were not tested in the courts. But in a similar situation a case arose in the Michigan Territory (Bank of Michigan vs. Williams) and was tried in the courts of New York; the court held that a law "enacted" instead of "adopted" by the governor and judges was not in contravention of the Ordinance of 1787 (5 Wendell, 480, 539). This is the only case in which any court was called upon to settle this specific question.

[7] Dunbar Rowland (ed.), *The Mississippi Territorial Archives, 1798-1803, Executive Journals of Governor Winthrop Sargent and Governor Charles Cole Claiborne,* I, 11.

Although the executive was the strongest branch of the government in the territorial stage, the position proved a difficult one in the Mississippi Territory. The governor was appointed by the President and confirmed by the Senate for a term of three years, but might be removed by the President at any time during this period. It was provided that he should "reside in the district and have a freehold estate therein of one thousand acres of land, while in the exercise of his office."[11] Under the Northwest Ordinance, he could convene, prorogue, or dissolve the General Assembly at will. These powers were used repeatedly during the administration of Robert Williams (1805-1808), when the powerful faction led by Cato West, who had expected to be appointed governor, again turned against an executive of the Territory.[12] In November, 1807, Governor Williams prorogued the Assembly until December, giving as his reason the fact that the legislature had set for itself a new time for meeting, in disregard of a law of Congress and without the consent of the governor.[13] His real reason was the hostility of the legislature to himself. When the Assembly reassembled in December, 1807, Williams again prorogued it until February, 1808,[14] and then dissolved it on March 1, 1808.[15] The regular election for representatives in July, 1808, created a second House of Representatives hostile to the governor. George Poindexter, strong opponent of the governor, was elected territorial delegate, and the opposition refused to confirm the governor's appointments. Poindexter introduced a bill to deprive the governor of the right to dissolve the General Assembly, but Congress decided the bill repugnant to the Ordinance of 1787.[16] On March 3, 1809, Williams notified the Assembly of its dissolution and his own resignation, at the same time calling for another election.[17] The General Assembly had won a victory. No other governor of the Mississippi Territory ever exercised the power of dissolution. With the exception of Williams, no governor used the power to prorogue the legislature as a political weapon. When Governor David Holmes prorogued the legislature during the War of 1812, it was solely because its members were needed to defend the settlements from Indian attack.[18]

---

[8] The House of Representatives repealed certain of the laws and the Senate amended the resolution so as to repeal all the laws since the governor and judges by "enacting" laws rather than "adopting" the laws of the original states were establishing a dangerous precedent. The two houses failed to agree and no bill passed. Resolution of Congress re Territorial Laws, May 9, 1800, *Territorial Papers,* V, 92-94.

[9] Mississippi petitions had asked that the territorial government be advanced to the second stage in order that the people might make their own laws. Petition to Congress by Committee of Inhabitants, October 2, 1799, *Territorial Papers,* V, 82; Charges against Governor Sargent, May 22, 1800, *ibid.,* V, 103.

[10] Rowland (ed.), *The Mississippi Territorial Archives, 1798-1803, Executive Journals of Governor Winthrop Sargent and Governor Charles Cole Claiborne,* I, 12.

[11] The Northwest Ordinance, Henry Steele Commager (ed.), *Documents of American History,* 129.

The governor possessed an absolute veto over all the acts of the General Assembly. In this and many other respects he was much like the British colonial governor. He was commander-in-chief of the militia, and had extensive appointive powers, filling hundreds of offices in the Territory. He possessed the pardoning power, and before the establishment of the legislature he created counties and townships by proclamation. For instance, Washington County, consisting of much of the present state of Alabama, was created by proclamation of Governor Sargent in 1798. In his proclamation the governor pointed out that the existing divisions did not "extend to the inhabitants upon the Tombigbee and other eastern settlements, equal administration of justice."[19] The authority of the Mississippi Territorial governor is vividly set forth in the following petition for statehood:

---

[12] Dunbar Rowland, *History of Mississippi,* I, 404.

[13] Governor Williams to the Legislature, November 11, 1807, *Territorial Papers,* V, 579-580.

[14] Governor Williams to the Legislature, December 24, 1807, *ibid.,* V, 591.

[15] Governor Williams to the Legislature, March 1, 1808, *ibid.,* V, 614.

[16] Rowland, *History of Mississippi,* I, 431.

[17] Proclamation by Governor Williams, March 3, 1809, *Territorial Papers,* V, 724.

[18] Prorogation of the Assembly, October 8, 1813, *ibid.,* VI, 399-400.

[19] *Statutes of the Mississippi Territory* (Natchez, 1816), 87.

> Your memorialist will not fatigue your honorable bodies, with a minute and critical examination of the various objections which exist to a territorial form of government. The powers of the executive are limited only by the responsibility he owes to the president of the United States. Our legislative authority is but a cypher without his concurrence. He is commander in chief of our militia, possesses without controul, the authority to appoint, all officers, civil and military: who hold their appointment during his will and pleasure. He is also possessed of an obsolute veto on all laws passed by the other two branches of the legislature, and may prorogue or dissolve the general assembly whenever in his opinion it shall be expedient, and there is none that can demand of him the reasons for his conduct. In theory the government can scarcely be distinguished from that which prevails in the British North American Colonies. In practice we feel its effects, and deprecate them while we acknowledge the benign influence of that paternal care, which we have ever experienced from the fostering hand of the Federal Government.[20]

The secretary was one of the most important officials of the Territory. He was appointed by the President for a term of four years and confirmed by the Senate. This term of four years, like the governor's three-year term was at the pleasure of the President. The tenure of the governor and the secretary was purposely staggered in order to make it unlikely that the Territory would be without either. The secretary was required to possess a freehold estate of at least five hundred acres of land. It was his "duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit such acts and proceedings, every six months," to the President of the United States.[21] In case of the absence, removal, resignation, or death of the governor the secretary became acting governor. The choice of a new governor was a slow process, and further delay resulted from difficult transportation to and communication with the Mississippi Territory. The Northwest Ordinance failed to make provision for an acting governor, but a Congressional act of August, 1789, provided for the secretary's temporary authority.[22] The secretary of the Mississippi Territory often became acting governor. The following are examples: When Governor Winthrop Sargent went east in his attempt to vindicate himself of the charges made against him by the people, the territorial secretary, John Steele, became acting governor. When Jefferson refused to reappoint Sargent and appointed William C. C. Claiborne as his successor, John Steele continued to act as governor until Claiborne reached the Territory. In 1804 Claiborne was made governor of the newly organized Orleans

[20] Memorial to Congress by the Territorial Legislature, December 27, 1814, *Territorial Papers,* VI, 484-487.

[21] The secretary's tenure, property qualification, and duties were all provided for in the Northwest Ordinance.

[22] *U. S. Statutes at Large,* I, 53.

Territory, and Secretary Cato West acted as governor for almost eighteen months. More than one secretary of the Mississippi Territory complained that the office of governor and territorial secretary was too great a burden to be borne by one man.[23]

Another important official in the Territory was the judge, also a presidential appointee. The tenure of the territorial judge was for life or good behavior. Only Congress might remove him, by impeachment and conviction of misconduct. When the Mississippi Territory was organized, its three judges had legislative as well as judicial duties. The governor and the judges were empowered to adopt laws of the original states for the Territory. In a letter urging newly appointed Judge William McGuire to go to the Territory as soon as possible in 1798, Secretary of State Timothy Pickering wrote that "the people of the Territory amount to five thousand; and since the last of March have been destitute of civil government. It is important therefore that the Governor and Judges (who constitute the legislature) shall assemble there as soon as possible."[24] After the first legislative session of the governor and judges, at which "Sargent's Code" was adopted, Judge Daniel Tilton went back east. The Secretary of State urged him to return to the Mississippi Territory to enable "the Governor again to make a legislature."[25] The legislative function, at first an important judicial duty, was shifted to the legislature in 1800.

As the Territory grew, Congress provided it with additional judges. Nineteen territorial judges were appointed between 1798 and 1817, as many judges died or resigned their posts.[26] In 1804, Congress passed a law giving a judge to Washington County, hundreds of miles from the residence of the three original judges in the Natchez area.[27] The new justice had exclusive jurisdiction in the Tombigbee and Tensas River settlements. However, settlement progressed so rapidly in the Tennessee

---

[23] Petition to Congress by John Steele, October 5, 1803, *Territorial Papers,* V, 241-243; Acting Governor Daingerfield to the Secretary of State, March 3, 1812, *ibid.,* VI, 280.

[24] Secretary of State to Judge William McGuire, June 30, 1798, *ibid.,* V, 40-41.

[25] Secretary of State to Secretary John Steele, December 21, 1799, *ibid.,* V, 91-92.

[26] Dunbar Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798-1935,* 11.

[27] *U. S. Statutes at Large,* II, 301. Harry Toulmin was appointed to the post. His first court was held at a place called Wakefield, about twenty miles below St Stephens. Toulmin had a distinguished record when he came to the Territory. Leaving England because as a dissenting preacher he was subject to religious persecution, he came to Kentucky where he became president of Transylvania University. In 1798, he was secretary of state for Kentucky and signed the Kentucky Resolution. Toulmin compiled the first digest of the laws of the Mississippi Territory and later of the state of Alabama. In addition to his duties as territorial judge, he served as "postmaster, preached and officiated at funerals and marriages, made Fourth of July orations, practiced medicine gratuitously and in general was head of the settlements." Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798-1935,* 21.

Valley that Madison County, the second county organized in what is now Alabama, was created by proclamation of Governor Robert Williams in 1808,[28] and in 1810 was given a judge.[29] Congress followed a very conservative policy in the creation of new judgeships. Judge Harry Toulmin complained in 1815 to William Lattimore, territorial delegate to Congress, that the district over which he had to ride, exclusive of Indian lands, was 340 miles long and 330 miles wide. In each of the seven counties of this area (most of which is now Alabama), he had to hold court twice a year. He asserted that two additional judges were needed to serve the area adequately.[30]

Although having life tenure, many judges resigned during the Territory's history. Harry Toulmin, judge of the Washington District from 1804 until Alabama was admitted into the union in 1819, was the exception rather than the rule. Of the first three judges appointed, the two appointed from outside the Territory remained only long enough to aid the governor in holding one legislative session. Judge William McGuire, the only trained lawyer of the three, returned to his home in Virginia and resigned.[31] Judge Daniel Tilton of New Hampshire went east, but, at the request of the Secretary of State, returned so as to "enable the governor again to make a legislature" and to adopt laws.[32] However, in 1802 Judge Tilton returned to Philadelphia and resigned, explaining to the Secretary of State that "the experience of years has convinced me that the duties of office as judge in the Mississippi Territory are incompatible with my private obligations as a husband and parent."[33] Only Judge Peter Bryan Bruin, who had lived in the Territory prior to his appointment, remained as judge for a considerable length of time. He resigned in 1808,[34] after a resolution of censure by the legislature brought an investigation by Congress.[35] The censure declared that he had "frequently appeared on the Bench in such an extreme state of Intoxication as to disqualify him entirely from performing the Solemn and important duties of his Office."[36]

---

[28] Harry Toulmin (ed.), *Digest of the Laws of the State of Alabama* (New York, 1823), 80.

[29] *U. S. Statutes at Large*, II, 563. Obidiah Jones, intimate friend of Senator William H. Crawford of Georgia, was appointed judge of Madison County. After he arrived in the Territory he bought a large plantation called Spring Hill, near the present town of Athens, Alabama. Many legends still exist of the great pomp with which Jones "used to open court and maintain its dignity." Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798-1935*, 23.

[30] Judge Toulmin to William Lattimore, December 18, 1815, *Territorial Papers*, VI, 618-622. See also Memorial to Congress by the Territorial Legislature, December 10, 1814, *ibid.*, VI, 475-476, which expressed the need for an additional judge in the eastern part of the Territory. West Florida had been added, yet no additional judge had been appointed.

[31] Secretary of State to Judge William McGuire, January 10, 1800, *ibid.*, V, 92.

[32] Secretary of State to Secretary John Steele, December 21, 1799, *ibid.*, V, 91-92. A "legislative" session required the presence of at least two judges.

[33] Judge Tilton to the Secretary of State, October 10, 1802, *ibid.*, V, 178.

[34] Judge Bruin to the Secretary of State, October 12, 1808, *ibid.*, V, 650.

[35] Report of the House Committee: Conduct of Judge Bruin, April 21, 1808, *ibid.*, V, 626-627.

Much criticism of the territorial judiciary was based on the failure of the judges to give their complete time to the judgeship. Although the Northwest Ordinance provided that the judges should reside in the district and own five hundred acres of land therein, many of the judges were absent for long periods. Acting-Governor Nathaniel Ware in a letter to the Secretary of State in June, 1816, asserted that "the non-residence and inactivity of our judges have completely paralyzed justice, and made it a name under which wicked people swindle."[37] In June, 1815, he wrote that the people "of this Territory display considerable anxiety on this subject; justice has been administered so irregularly from the circumstances of judges being appointed from the States, delaying in coming out—and very often resigning in disgust; that there is now a manifest wish generally, that one of our own citizens be Selected."[38] William Lattimore, the territorial delegate, presented to Congress in October, 1815, a petition from the people of the Mississippi Territory asking for the appointment of one of their own citizens to the vacant judgeship. The petition stated that if the judges wre appointed from outside the Territory, they had to go back east to attend to their private affairs, which deprived the Territory of one judge nearly all the time.[39]

The legislative branch of the government consisted of a House of Representatives and a Council. The Act of 1800 provided that the House of Representatives was to consist of nine members only "until the number of free male inhabitants of full age in the said territory shall amount to five thousand."[40] After that the legislature could increase the size of the House of Representatives and apportion representatives among the separate counties. The Northwest Ordinance provided that representatives were to be elected for two years and should be possessed of a freehold estate in the Territory of two hundred acres.

Provisions for the creation of a Council and a limitation of its size were incorporated in the Northwest Ordinance. The Council was to consist of five members appointed by the President from a list of ten persons nominated by the House of Representatives. Members of the Council were to have a freehold estate of five hundred acres of land. They were to serve for five years unless sooner removed. It was the duty of the House of Representatives at least four months before the term of the Council expired to nominate ten persons from whom the President would choose a new upper house. In case a vacancy occurred, the House of Representatives would choose two from whom the President would appoint one to serve out the unexpired term. The Council corresponded to the governor's Council in the colonial period but did not have the judicial or advisory functions of the colonial Council; it served only as the upper house of the legislature. The governor of the Territory often wrote letters to the President of the United States expressing his preference for certain of the nominees,[41] but other than that he had no power to affect the appointments unless the President decided to give the power to appoint the Council to the governor, as President Jefferson did in 1805.[42] Jefferson wrote Governor Robert Williams that he had received from the speaker of the House of Representatives in the Mississippi Territory a list of ten names, from which he had to choose five as members of the Council. Since he knew none of the nominees "it would be to substitute chance for choice were I to undertake the designation. I therefore inclose you a blank instrument of designation, which I pray you to fill up with the names you think best, and to inform me of the names that you insert that they may be recorded here."[43] Although the procedure followed by Jefferson was unusual, the President had to rely on the advice of the governor or others in the Territory as he seldom knew anything about the nominees submitted.

---

[36] Resolutions of the Territorial Legislature, March 1, 1808, *ibid.*, V, 615.

[37] Acting-Governor Ware to the Secretary of State, June 18, 1816, *ibid.*, VI, 692.

[38] Secretary Ware to the Secretary of State, September 4, 1815, *ibid.*, VI, 553-554. Judge Thomas Rodney believed that competent judges were hard to secure because of the "trifling salary allowed a judge of this Territory." Judge Rodney to President Thomas Jefferson, December 14, 1806, *ibid.*, V, 489-491.

[39] Petition to William Lattimore by Citizens of the Territory, October, 1815, *ibid.*, VI, 561-563.

[40] *U. S. Statutes at Large*, II, 69.

The question of whether the territorial governor could dissolve the Council as he could the House of Representatives was raised in 1808 when Governor Robert Williams dissolved both during his fight with the legislature.[44] During the colonial period the governor could not dissolve the Council when he dissolved the lower house and there were those in the Mississippi Territory who contended that Governor Williams had exceeded his power.[45] The Northwest Ordinance provided that "the governor shall have power to convene, prorogue and dissolve the general assembly." Governor Williams contended that the words "general assembly" meant both branches. However, he wrote the Secretary of State that this is "an important case and perhaps the first that has occurred under a Territorial Government; I shall not feel any chagrin should the opinion I have formed as to the effects of a dissolution on the Council be over-ruled."[46] President Jefferson supported the governor in his position.[47] The House of Representatives, which itself was elected as a result of a special election, nominated new councilmen for the unexpired term.

---

[41] Governor Williams to the President, October 5, 1808, *Territorial Papers,* V, 648-650; Governor Holmes to the President, July 28, 1814, *ibid.*, VI, 447-448.

[42] Jefferson to Governor Williams, April 28, 1805, *ibid.,* V, 400.

[43] *Ibid.*

[44] Governor Williams to the Legislature, March 1, 1808, *ibid.*, V, 614.

[45] Daniel Burnet to the Secretary of State, August 27, 1808, *ibid.*, V, 634-636.

[46] Governor Williams to the Secretary of State, March 8, 1808, *ibid.*, V, 616-618.

When the Territory was granted a legislature, it was also given a delegate to Congress. The first legislature by joint ballot in December, 1801, elected Narsworthy Hunter to represent the Territory in Congress.[48] Previously, the opposition to Governor Winthrop Sargent sent Narsworthy Hunter as an agent to Congress in Philadelphia. In his correspondence Hunter signed himself, "Agent, Mississippi Territory."[49] However, he had no official position and was more a lobbyist than a delegate. When the legislature chose him as its first delegate in 1801, he secured formal recognition.[50] Georgia objected to his admission on the ground that she still owned the area he represented, but Hunter was seated in spite of this objection.[51]

In 1808 Congress provided for direct election of the territorial delegate.[52] The delegate was to be elected at the same time as members of the House of Representatives, and became the direct representative of the people of the Territory in Congress. Although he did not have power to vote, he was the agent through whom the people of the Territory could make themselves heard. He had more power than the British colonial agent, since he had the right to speak in Congress at any time, whereas the colonial agent had the right to speak or testify before Parliament only when called upon. The delegate to Congress served on committees and might even serve as a committee chairman. For instance, in December, 1815, the petition of the Mississippi territorial legislature for the admission of the Territory as a state was referred to a committee of which William Lattimore, the Mississippi territorial delegate, was made chairman.[53]

The delegate to Congress from the Mississippi Territory during the territorial period presented hundreds of petitions, memorials, and resolutions of the legislature and of the inhabitants of the Territory to Congress and to the President. Through him the Territory made itself heard in the national councils. These petitions covered almost every subject in which the people of a frontier community might be expected to have an interest. As transportation to and communication with the Territory were exceedingly difficult, Congress depended to a great extent on petitions and letters in determining the wishes of the people. This situation made the use of petitions very effective.

---

[47] The Secretary of State to Governor Williams, July 19, 1808, *ibid.*, V, 633.

[48] Narsworthy Hunter to the Vice President and Senate, January 28, 1802, *ibid.*, V, 140-141.

[49] Charges against Governor Sargent, May 28, 1800, *ibid.*, V, 99-105. This contains several letters of Narsworthy Hunter.

[50] Narsworthy Hunter to the Vice President and Senate, January 28, 1802, *ibid.*, V, 140-141.

[51] *Annals of Congress*, 7 Cong., 1 Sess., 344-347.

[52] *U. S. Statutes at Large*, II, 455.

[53] Rowland, *History of Mississippi*, I, 472.

Many of these petitions requested a larger share for the people in territorial control. Others dealt with pre-emption rights, and more with conflicting titles to lands than any other single subject. Other requests concerned protection against the Indians, the building of roads, the establishment of new post offices, the opening of the Mobile River to navigation, the granting of the sixteenth section of land in each township to schools, improvement in the distribution of the mails, organization of the militia, extension of the suffrage, and the granting of additional judges. Arguments were made against federal courts being established in the Territory because non-resident claimants might then bring suit for their lands.[54]

In 1802 citizens of the Territory petitioned Congress to extend the suffrage to every male citizen twenty-one years of age who had been a resident for six months.[55] Most petitions asked only that tax paying qualifications be substituted for property holding. Nearly all of them would shorten the residence requirement for voting from two years to six months and eliminate the property qualification whereby one had to have a freehold of fifty acres to vote. In 1804 and twice in 1807 the territorial legislature urged Congress to substitute a tax paying qualification for voting instead of property holding.[56] A petition in December, 1807, declared that "in all free Governments it is admitted that Taxation and representation should go hand in hand, that those who pay a proportion of the public expence, should have a voice in choosing Representatives of the people: We pray therefore that the right of suffrage may be extended to every free male white person of twenty-one years of age, who has resided one year in our Country and paid Taxes six months previous to the time of voting."[57] The substitution of a tax paying requirement for a property holding one would have extended the suffrage substantially.

As a result of these petitions, Congress in 1808 passed a law regulating the suffrage in the Mississippi Territory which superseded the suffrage requirements of the Northwest Ordinance.[58] This act did not, as the petitioners had asked, substitute tax paying requirements for property requirements. It left the fifty acre freehold requirement but added an "or clause" whereby anyone owning a town lot worth $100 could also vote. Some of the petitions had pointed out that there were property owners in the Territory worth as much as fifty acres of land (among whom were owners of town lots) who could not vote. Residence requirements were reduced from two years to one. The law of 1808 gave the petitioners little that they had asked for; Congress proved much more conservative than the territorial legislature. This act is also significant in that it drew the color line for voting for the first time. Free Negroes, although they might meet the other qualifications, were not eligible to vote. The act also drew the color line as a basis for apportionment, counting for representation "free white male inhabitants" above twenty-one years of age. The Northwest Ordinance which had applied previously made the basis "free male inhabitants" twenty-one years of age.

---

[54] Many petitions are printed in *Territorial Papers,* V and VI.

[55] Petition to Congress by Citizens of the Territory, August 25, 1802, *ibid.,* V, 159-174.

[56] Memorial to Congress by the Territorial Legislature, December 14, 1804, *ibid.,* V, 361-367; Memorial to Congress by the Territorial Legislature, January 27, 1807, *ibid.,* V, 497-506; Memorial to the President and Congress by the Territorial Legislature, December 21, 1807, *ibid.,* V, 587-590.

[57] Memorial to the President and Congress by the Territorial Legislature, December 21, 1807, *ibid.,* V, 587-590.

[58] *U. S. Statutes at Large,* II, 455. The most democratic part of this act was the grant to the people of the right to elect the delegate to Congress.

The legislature and mass meetings of citizens in the Territory continued to petition Congress to remove the property qualifications for voting. In January, 1814, the territorial legislature argued that many people in the Territory held personal property which should give them the right to vote.[59] They asked whether "the man who has a large Stock of cattle, or a considerable Property in Slaves" should not be allowed to vote. They asserted that many had come to the Territory who did not own land because of the failure of the government to put it up for sale. At last in 1814 Congress passed a suffrage law in conformity with the views of the petitioners. Property qualifications were abandoned and a "county or territorial tax" was made a prerequisite for voting. This law broadened the basis of suffrage and allowed many to vote who could not meet the old requirements.[60] The measure remained in effect until Mississippi became a state in 1817, when the state established its own qualifications for voting. The congressional law remained the basis for voting in the Alabama Territory from 1817 to 1819.

The people of the Mississippi Territory wanted more and more participation in their government. Like frontiersmen generally they were very democratic. Class lines had not had time to form. They were much more democratic than a Congress in which the conservative states of the East were still dominant. A petition from the Territory in 1802 asked that only the governor be appointed in Washington, and that the other officials, including the judges and the territorial secretary, be appointed by the governor with the consent of the Council, instead of by the President with the consent of the Senate. The petition also asserted that the members of the Council should be elected by the voters instead of being nominated by the House of Representatives and chosen by the President of the United States. "These proposed Alterations in the Ordinance would remove some needless and inconvenient encroachments on our rights as American Citizens—they are suited to our local situation, far distant from our parent Government; and would Obviate many serious evils under which we now Labor,"[61] the petition stated. Requests for a more democratic government continued throughout the territorial period but no further concessions were granted by Congress. Toward the end of the period petitions placed greater emphasis on a division of the Territory than on a change of the forms of government.

---

[59] Memorial to Congress from the Territorial House of Representatives, January 11, 1814, *Territorial Papers,* VI, 411-413.

[60] *U. S. Statutes at Large,* III, 143.

---

[61] Petition to Congress by Citizens of the Territory, August 25, 1802, *Territorial Papers,* V, 159-174.

CHAPTER II

THE ALABAMA TERRITORY

A growing animosity between the eastern and western parts of the large Mississippi Territory stemmed from the early numerical superiority of the Mississippi Valley and the difficulties of transportation and communication between east and west. The Tombigbee settlements were in such a hopeless minority that they could not use regular channels (the territorial delegate or resolutions of the territorial legislature) to get their problems before Congress. They resorted to petition, begging Congress as early as 1803 to grant them separation from the Mississippi River settlements. Their plea, signed by over a hundred persons, set forth the problems of the eastern settlers in the following words:

> From the late and rapid migration to this District from the State of Georgia and other parts of the United States, the number of our inhabitants is estimated at more than three thousand, all of whom now reside within the District of Washington and are subject to the Laws of the Mississippi Territory, which are enacted at the distance of nearly three hundred miles from us, all of which distance is a howling wilderness with its usual inhabitants of Savages and beasts of prey.—That part of the Territory on the Mississippi and the settlements on the Mobille [*sic.*] Tombecbee and Alabama rivers are composed of people different in their manners and customs, different in their interests, and nature appears never to have designed the two countries to be under the same Government. . . .[1]

In May, 1809, nearly three hundred inhabitants of the territory to the east of the Pearl River petitioned Congress to divide the Mississippi Territory. They asserted that they paid taxes for the benefit of the territorial government but received none of the benefits of that government; they contended further that they were "mere cyphers in the Territorial Government:—that the remoteness of their situation and the total dissimilarity of their channels of Trade, give the people of the Mobile and its adjacent waters, no common interest with those of the Mississippi." They charged that the wilderness of two hundred to three hundred miles between the settlements east and west of the Pearl River "deprives us of everything but a merely nominal representation in Congress,—renders it exceedingly inconvenient to the representatives of the people East of the Pearl River to attend the Territorial Assembly, cuts off almost all useful communication between those Representatives and their constitutents, renders the Executive department a Stranger to them, —and deprives them of the advantages of that union of Judicial talents and rotation of Judges so necessary to check the aberrations of feeling, and to ensure public confidence in the administration of justice." They pointed to their increasing population, together with the growth of Madison County in the Tennesee Valley area as evidence that the eastern part of the territory alone could support a territorial government.[2]

---

[1] Petition to Congress by Inhabitants of Washington District, November 25, 1803, *Territorial Papers,* V, 290-292.

On November 11, 1809, the people of the eastern part of the Territory again convened to petition Congress on dividing the Territory. This convention forcibly stated its position as follows:

> Representatives of the American People! We have Petitioned for a Government.—At Present we have only the name of one. We know nothing of our Executive Officers:—we know nothing of our Delegates in Congress. —They know nothing of us. We covet not the honour of being a part of a State on the Mississippi.—A change of names will not bring us nearer to the seat of Government;—it will not bring our Public Officers nearer to us:—it will not give to the Mississippi Legislature any greater knowledge of us,—any greater sympathy with us,—any greater zeal for our security, for our interests, or for our rights. . . . We have frequent collisions with the Indians and Spaniards. We not only pay taxes to the Spanish Government, but our run-away Negroes find protection under it. It would be unreasonable, indeed, to expect from a Governor residing on the Mississippi a steady and prompt attention to our interests, whilst he cannot know when they are violated. . . .[3]

Once more, on December 26, 1809, the people east of the Pearl River in the Mississippi Territory in convention assembled sent a memorial to Congress requesting that that area be organized as the "Mobile Territory of the United States."[4] This petition placed great emphasis on a more democratic form of government as well as on a division of the Territory. It asked that the governor and the secretary of the Territory be elected by a majority of the votes of the people instead of appointed by the President of the United States and confirmed by the Senate as under the provisions of the Northwest Ordinance; that the legislative Council be abolished and a Senate elected by the people of the Territory be created in its place; and that all property qualifications for voting be abandoned in favor of a tax-paying one. These proposals were much more liberal than the provisions of the Northwest Ordinance. The petition asked that the governor and the sheriffs be elected triennially by the people and be ineligible to succeed themselves; and that the governor's veto be made suspensive rather than absolute as under the Northwest Ordinance. If Congress had passed a new ordinance for the government of the Territory based on this petition, the Territory would have been divided, the national government's authority greatly decreased, the governor's power reduced, and the people of the Territory given local autonomy.

---

[2] Petition to Congress by Inhabitants East of the Pearl River, May, 1809, *ibid.*, V, 733-737.

[3] Petition to Congress by a Convention East of the Pearl River, November 11, 1809, *ibid.*, VI, 26-31.

[4] Memorial to Congress by a Convention East of the Pearl River, December 26, 1809, *ibid.*, VI, 36-39.

Control of Mobile by the Spanish burdened the Easterners' trade with high duties. This was as much a provocation to the people of the area as the control of the mouth of the Mississippi River had been earlier to the western settlers. The opening of the Mississippi, Easterners thought, had left their western superiors unconcerned with eastern problems. The November, 1809, petition to Congress asserted that "we pay on what we sell, 12 per centum, and on the proceeds of our sales, another 12 per centum before we can bring them home. Hence we often pay for the flour of Kentucky and Pennsylvania, four times the price that is paid by our fellow citizens at Natchez,—but neither they nor their delegate know anything of this,—and it is to you, and not to them, that we look for relief.—Are we Americans or Spaniards?—Shall we support the Republic of the United States, or the Spanish Monarchy?"[5]

President Madison issued a proclamation ordering the extension of American authority over West Florida to the Perdido River on October 27, 1810; West Florida east of the Pearl River was added to the Mississippi Territory by an act of Congress in May, 1812;[6] but Spain continued to hold the port of Mobile until 1813. Congress passed an act in February, 1813, authorizing the President to occupy Mobile,[7] and Mobile was seized and made a port of entry on July 22, 1813.[8] For the first time the people of the eastern part of the Territory had the free use of the port at the mouth of the Mobile River. This removed one of their major grievances but the long fight for the opening of the river had unified them and given them a feeling of separateness from the Mississippi settlements.

The western settlements secured eight of the nine representatives in the first legislature,[9] and dominated the Territory until Mississippi became a state in 1817. In 1816, a petition to Congress signed by members of the territorial legislature from east of the Pearl River declared that their area had more free white population than the west yet it had "only Eight Members of the Representative Branch of the Legislature, whilst the Counties West of Pearl River, have sixteen."[10] The west also controlled the choice of the Congressional delegate, both before and after

---

[5] Petition to Congress by a Convention East of the Pearl River, November 11, 1809, *ibid.*, VI, 26-31.

[6] *U. S. Statutes at Large,* II, 734.

[7] *Ibid.,* III, 472.

[8] *Ibid.,* III, 35.

[9] *Ibid.,* II, 69.

[10] Petition to Congress by Members of the Territorial Legislature, February 15, 1816, *Territorial Papers,* VI, 655-656.

1808 when he was selected by direct election. Judge Harry Toulmin asserted in a letter to the President that "the Mississippi delegate represents us [the people east of the Pearl] about as much as the Middlesex members represented the American colonies in the British parliament."[11] The capital of the Territory was located first at Natchez and then at Washington—each inaccessible to the eastern settlements. The isolation, resulting from transportation and communication difficulties, intensified eastern consciousness of discrimination.

The cause of the divisionists gained strength as the years passed. The Tennessee Valley was settled rapidly after 1808 and a powerful group of Georgia politicians in the Valley were not without recourse when outvoted on the Mississippi. They had influence in Washington, especially through William H. Crawford and Charles Tait of Georgia,[12] and they were determined that the Mississippi Territory should be so divided that they should be separated from the Natchez area. In 1811, the Madison County settlers even were willing, for the privilege of governing themselves, to have the Tombigbee settlers permanently attached to the Mississippi River region. They gave their support to a proposal by George Poindexter, territorial delegate, that the Territory be divided by a line running due east from the mouth of the Yazoo to the Chattahooche.[13] This would have left the Tennessee Valley settlers alone in control of the upper region and admitted the southern area, including West Florida, into the union as a state. The Tennessee Valley's espousal of a policy of separation from the Tombigbee settlements is the first evidence of sectionalism between North and South Alabama. Even as late as January, 1817, John W. Walker wrote Senator Charles Tait of Georgia: "With respect to the line of division, you know that I had been inclined to prefer an east and west one, with a view of preventing as far as might be, any collisions of interests between the upper and lower country."[14] However, division along a line running east and west gained little support in Congress and later bills either proposed the admission of the whole area as one state or a division along a line drawn north and south. Finally, the Tennessee Valley achieved such a numerical majority over the Tombigbee settlers that they dropped any opposition to union with them.

---

[11] Judge Toulmin to the President, July 28, 1810, *ibid.*, VI, 84-90.

[12] William H. Crawford, Georgia Senator from 1808-1813 and Secretary of Treasury from 1817-1825, dispensed the federal patronage in the Alabama Territory and during the early years of statehood. Charles Tait, Senator from Georgia (1809-1819) became the spokesman in the Senate for the eastern section of the Mississippi Territory. Letters of John W. Walker to Tait reveal how completely Tait became the patron in the Senate for the easterners in the division of the Territory and how he wrote and sponsored the bill for the admission of Alabama to statehood. On December 3, 1818, Walker wrote Tait: "I have for my own part always regarded you as the effective delegate of the Territory." John W. Walker to Senator Charles Tait, September 21, 1817, November 9, 1818, December 3, 1818, and January 19, 1819, Tait Papers (Department of Archives and History, Montgomery, Alabama). All Walker letters to Tait hereinafter cited are in this collection.

[13] Mississippi Transcripts, John W. Walker to George Poindexter, December 23, 1812; *Annals of Congress,* 12 Cong., 1 sess., 554; Thomas Perkins Abernethy, *The Formative Period in Alabama, 1815-1828,* 34.

[14] John W. Walker to Charles Tait, January 18, 1817.

All early petitions from the western part of the Territory asked for the admission of the whole Territory into the union as one state. The territorial legislature passed resolutions in July, 1809, against Washington County's petition for separation.[15] In November, 1811, the legislature argued that the admission of the whole area as one state would make it possible for the new state to bear the increased expenses of a state government. It would increase immigration to the state, which in turn would strengthen the frontier and help pay the debt to Georgia.[16] Later petitions asserted that the area, although larger than any state in the union, could never have a very large population because of the sterility of much of the soil.[17]

Fear that the federal courts which would come with statehood would be a threat to their confused land titles caused many people both in the east and west to oppose admission to the union.[18] Prior to 1763 France had granted titles to land in the area. From 1763 to 1783 many titles had been granted by the British government. In spite of the claim of the United States to latitude 31°, Spain was in possession of the area to 32° 28′ until she finally withdrew in 1798 as a result of the Pinckney Treaty signed in 1795. During this period Spain granted titles to land in the area. To complicate matters still more, titles were granted by the state of Georgia when she attempted to set up Bourbon County in the Natchez area in 1795. At about the same time the Georgia legislature granted large areas of land to the Yazoo land companies for resale to settlers. The next legislature revoked these fradulent grants to the companies and those who had bought land from the companies were left without clear titles. It is not surprising that land titles were clouded, and that the Territory was disrupted by conflicting claims. The Articles of Cession by Georgia provided that the existing titles to lands in the area be recognized—an almost impossible task. Some grants, especially those of the British period, had been made to absentees, who could not prove their claims until federal courts were established. The fear of what federal courts might do was therefore the source of the greatest opposition to statehood in both sections of the Territory.

---

[15] Resolution by the Territorial House of Representatives, July 5, 1809, *Territorial Papers,* VI, 3.

[16] Memorial to Congress by the Territorial Legislature, November 14, 1811, *ibid.,* VI, 242-243.

[17] Memorial to Congress by the Territorial Legislature, December 5, 1815, *ibid.,* VI, 595-596; Proceedings of a Convention, October 29, 1816, *ibid.,* VI, 708-717.

[18] Petition to Congress by Inhabitants of the Territory, October 10, 1814, *ibid.,* VI, 449-461; *Annals of Congress,* 13 Cong., 3 sess., 1189.

In November, 1812, the House of Representatives passed an enabling act for the admission of the whole territory as one state.[19] But the Senate committee to which the House bill was referred recommended that the Territory be divided along the Tombigbee River. The Senate report further proposed that the question lie over until the next session because of "the embarrassed situation of the land titles in that territory, the want of numbers in its population, and the great division that exists amongst the inhabitants in relation to the question of being made a state."[20] From the beginning, the House, where the North was in a majority, wanted the whole territory admitted as one state. On the other hand, the Senate, where the South was trying to maintain a balance, insisted on carving as many slave states as possible from southern territory.[21] Hence, the Senate wanted the Mississippi Territory divided into two states, especially since the great size of the area and its geography made two states feasible. A legal obstacle to division of the Territory was removed when George Poindexter introduced and Congress passed a resolution asking Georgia to release the United States government from the provision in the Articles of Cession which provided for the admission of the whole area as one state.[22] The Georgia legislature acquiesced a few months later[23] and the Senate's position was thus further strengthened.

Another obstacle to statehood was removed in 1814 when the federal government settled the "Yazoo land claims." For years, John Randolph of Roanoke had blocked a settlement, although the Georgia Articles of Cession had provided that five million acres in the territory might be used for that purpose.[24] With John Randolph out of Congress in 1814, the administration was at last able to secure the passage of an act authorizing the issuance of script to the Yazoo claimants to be redeemable in land. Those whose titles to land were cleared by this act no longer feared federal courts and therefore no longer opposed statehood. A petition to Congress stated that "the Yazoo claims being withdrawn from our apprehensions, the demands on us by virtue of grants or patents from the British government, remain as the only obstacles of the kind, to which your Memorialists beg leave to invite the consideration of the National legislature."[25] A committee of the House of Representatives in 1815 reported that "the extinguishment of the Yazoo claims . . . removed what was perhaps the most general objection to admission. . . ."[26]

---

[19] *Ibid.*, 12 Cong., 2 sess., 196-197.

[20] Report of the Senate Committee on the Enabling Bill, February 26, 1813, *Territorial Papers,* VI, 358-359.

[21] Abernethy, *The Formative Period in Alabama, 1815-1828,* 34.

[22] *U. S. Statutes at Large,* II, 786.

[23] An Act of the Georgia Legislature, December 5, 1812, *Territorial Papers,* VI, 337-338.

[24] Articles of Cession and Agreement, April 24, 1802, *ibid.*, V, 142-146.

[25] Petition to Congress by Inhabitants of the Territory, October 10, 1814, *ibid.*, VI, 449-461.

Agitation for and against statehood was renewed after the War of 1812. But strangely enough it was the eastern section which now wanted admission of the whole Territory as one state, and the western part that supported division. This change of front was caused by the rapid growth and prosperity of the eastern section following the opening of Mobile harbor for American trade in 1813 and the rapid westward migration after the War of 1812. Many new counties were created in the east and the growth of the upper Alabama and Tennessee River valleys was exceptionally rapid.[27] On the other hand, the western portion developed more slowly and adopted the earlier eastern fear of sectional domination. Petitions from the eastern and western parts of the Territory now reflect this reversal of interest.

The east petitioned Congress in December, 1815, asking that a constitutional convention for the whole Territory be assembled after a census had been taken and that representation in the convention be apportioned on the basis of free white population.[28] Easterners believed that such an apportionment would give them control of the constitutional convention. Another petition in February, 1816, signed by members of the legislature from the east, complained of the fact that the east had only eight representatives to sixteen for the western section in the territorial House of Representatives. It asked that Congress reapportion representation because the people were "fearful if a law should pass admitting this Territory into the Union and the Members of the Convention are to be apportioned by the Territorial Legislature, that the same inequality of Representation will be Continued."[29] The counties east of the Pearl River held a convention at John Ford's house in October, 1816, and drew up a petition to Congress asking for the admission of the Territory as one state.[30] This convention, which voted eleven to four against division of the Territory, elected Judge Harry Toulmin to represent the east at Washington; William Lattimore, the territorial delegate, was the spokesman of the western settlers and was at this time working for division.[31]

---

[26] *Annals of Congress,* 13 Cong., 3 sess., 1189.

[27] Madison County in the Tennessee Valley was organized in 1808, Baldwin County in 1809, Mobile County in 1812, Clarke, Monroe, and Montgomery counties on the Alabama River in 1812, 1815, and 1816 respectively.

[28] Petition to Congress by Inhabitants East of the Pearl River, December 14, 1815, *Territorial Papers,* VI, 601-605.

[29] Petition to Congress by Members of the Territorial Legislature, February 15, 1816, *ibid.,* VI, 655-656.

[30] Proceedings of a Convention, October 29, 1816, *ibid.,* VI, 708-717. The Tennessee Valley was not represented at this meeting and was apparently still working through Senator Charles Tait of Georgia for division. In January, 1817, John W. Walker wrote Tait: "I consent very cheerfully to the division suggested by you. It is far better than none at all. Recent circumstances, too, have had an influence in reconciling me to your plan. By the Treaties of last summer, our settlements will be unbroken from the State of Tennessee to the Mexican Gulf; and the probability is that we shall not very speedily obtain more lands near the Tennessee River. Divide us, then, my dear Sir, by a n[orth] and s[outh] line: but be not too readily seduced by the idea of a natural boundary to establish the Tombeckee as

Reports of a committee of the House of Representatives in 1815 and 1817 contended that so much of the area was made up of pine barrens it could never support a large population and that the admission of the whole area to the privileges of statehood would encourage immigrants to settle in the area.[32] This would improve the military defense of the United States and bring more money into the treasury from the sale of public lands. The Mississippi Territory had been for "a longer time under the restraints of a political minority than any other territory of the United States,"[33] one of the reports declared. As a result, the House of Representatives in March, 1816, again passed a bill to admit the whole Territory as a state, but the Senate had not changed its mind about division.[34] Although Judge Toulmin reached Washington and testified before House and Senate committees on the subject, he was unable to prevent division.[35] The Senate passed an enabling act for admission of the western part of the Territory in February, 1817, and the House of Representatives accepted the Senate bill with minor amendments.[36] The President signed the act on March 1, 1817.

At the same time Congress passed an act, to take effect with the admission of Mississippi, organizing the Alabama Territory.[37] This law established the boundaries of the new territory, provided that the laws of the Mississippi Territory should apply to the Alabama Territory until changed by the Alabama territorial legislature, made St. Stephens the capital, and created an additional judge in order to make a territorial court of three members. The act also formed a House of Representatives

---

the line. Give it to us of the East wholly. Remember the hard facts of the Savannah. If it be in our jurisdiction entirely, we can improve its navigation whenever we grow rich enough and wise enough, without depending on the slow and doubtful concert of the rival and jealous interest of the Mississippi." John W. Walker to Charles Tait, January 18, 1817.

[31] Proceedings of a Convention, October 29, 1816. *Territorial Papers,* VI, 708-717.

[32] *Annals of Congress,* 13 Cong., 3 sess., 1187-1189; *ibid.,* 14 Cong., 2 sess., 564.

[33] *Ibid.,* 13 Cong., 3 sess., 1188.

[34] *Ibid.,* 14 Cong., 1 sess., 1300-1301.

[35] Judge Toulmin to H. B. Slade, January 16, 1817, *Territorial Papers,* VI, 748-749.

[36] *Annals of Congress,* 14 Cong., 2 sess., 801, 1034.

[37] *U. S. Statutes at Large,* III, 371-373. Clarence E. Carter (ed.), *The Territorial Papers of the United States, The Territory of Alabama,* XVIII, 53-57, hereinafter cited as *Territorial Papers.* In September, 1817, John W. Walker wrote Senator Charles Tait: "I know how much we are indebted to you for the division of the Territory. . . . You may draw, therefore, for your public dinner whenever you get hungry enough to travel out here for it, so as to enable us to spread the table in a Territory of your own making." John W. Walker to Charles Tait, September 21, 1817.

and a Council to be made up of all members of the Mississippi territorial legislature representing counties in the new Territory. The law thus provided in the beginning for the second stage of territorial government and became the first case under the Northwest Ordinance in which a territory was not first governed by a governor and judges alone.[38] Later, there was to be a general election for representatives in the Alabama Territory, and the legislative Council was to be formed in the regular way except that the existing councilmen were allowed to participate in nominating new members of the Council to the President of the United States. The act provided for the appointment by the President of a governor and secretary "who shall respectively, exercise the same power, perform the same duties, and receive for their services the same compensation, as are provided for the governor and the secretary of the Mississippi Territory." A delegate to Congress should be elected by the joint vote of the House of Representatives and the Council, which took from the people the power to elect the delegate under the Act of 1808. Money in the treasury was to be proportionately divided according to the amount paid.

Mississippi became a state on December 10, 1817, and the Alabama Territory came into existence on the same day. President James Monroe appointed as governor ex-Senator William Wyatt Bibb, of Georgia, who had resigned his seat in the United States Senate a few months before because his vote for a bill increasing the salaries of senators aroused a storm of protest at home. His colleague, Charles Tait, was under the same condemnation and considered resigning with Bibb. However, he changed his mind under the urgings of John W. Walker of Huntsville and remained to sponsor the Alabama Admission Bill in 1819.[39] Walker implored Tait to bring with him to Alabama the act of Alabama's "adoption into the great family of Confederated America."[40] Both Bibb and Tait were soon to become influential members of the "Georgia Party" in early Alabama politics. Governor Bibb owed his appointment to the fact that he was a close personal friend of William H. Crawford, then Secretary of the Treasury.[41]

Alabama grew so rapidly that there were only two sessions of the Alabama territorial legislature, both in the year 1818, before statehood. The first session, composed of the hold-over members of the old Mississippi territorial legislature, was held January 19, 1818, at St. Stephens. This legislature divided the Territory into three judicial circuits and created thirteen new counties, most of which were in the upper Alabama and Tombigbee River Valleys or in the Tennessee Valley.[42] It nominated six men from whom the President was to appoint three new councilmen and elected John Crowell as the first delegate of the Territory to Congress. A commission was appointed to report to the next session of the legislature a suitable place for a permanent capital, and a law to take the census preparatory to statehood was passed.[43]

---

[38] An act establishing the Alabama Territory, March 3, 1817, *Territorial Papers,* XVIII, 56.

[39] John W. Walker to Charles Tait, September 22, November 9, 1818.

[40] *Ibid.,* September 22, 1818; Alma Cole Tompkins, *Charles Tait,* 12-16. Tait had just purchased a plantation upon the Alabama River and planned to move to Alabama at the end of his term.

[41] Abernethy, *The Formative Period in Alabama,* 38.

The second session of the legislature,[44] meeting in November, 1818, apportioned representation on the basis of the census provided for by the first session.[45] The legislature was aware that this apportionment would be used by Congress to assign representation in the constitutional convention soon to be called and a fight developed between the northern and southern part of the Territory on the basis of the apportionment.[46] The Tennessee Valley was at this time the most populous section, and sought representation of white population only, a system which would give Madison County eight representatives to four for the next most populous county.[47] Members of the legislature from the south tried to place a limit on the number of representatives one county could have.[48] They finally abandoned this attempt, but they did so only after they had attached a rider to the apportionment bill providing that the permanent capital of the Territory should be placed at Cahaba, a site previously chosen by Governor Bibb, in the southern part of the Territory.[49] But on this point the Southerners had to agree that Huntsville was to be the temporary capital until the capital could be laid out on land given by Congress at Cahaba and the necessary buildings provided.[50] This session of the legislature also created two new counties, St. Clair and Autauga. Anticipating a constitutional convention, the legislature passed a law authorizing the expenses of the convention.[51] The governor reported to the legislature that "it is probable that the whole number of inhabitants at this time exceeds seventy-five thousand. . . . There can be no doubt, that an application on the part of the territory for admission into the union, will be readily granted by the National Legislature."[52] People were moving into the Alabama Territory by the thousands each month and the price of land in the area was booming.[53] In April, 1819, the Huntsville *Republican* estimated that the population was over one hundred thousand, since the census of the summer of 1818 had been taken when settlers had been "pouring in with increasing rapidity."[54]

---

[42] The counties were Cotaco, Lawrence, Limestone, Lauderdale, Tuscaloosa, Marengo, Cahaba, Conecuh, Marion, Dallas, Shelby, Blount, and Franklin.

[43] For the acts passed by this first session, see *Acts of Alabama Territorial Legislature,* 1 session, 1818.

[44] John W. Walker, Speaker of the House of Representatives during this session, wrote Charles Tait: "We are almost all new members; and you may guess that I am a sufficiently awkward Speaker. But we shall get along after our own way." John W. Walker to Charles Tait, November 9, 1818.

[45] *Acts of Alabama Territorial Legislature,* 2 sess., 1818, 4.

[46] Walker wrote Tait in regard to Tait's Admission Bill: "But, I shall not consider your part as thoroughly played unless you give to the several counties their relative and proper weight in the convention. . . . a fair and equal apportionment is all I ask. I want nothing for Madison but her rights. Attempts are making here to deprive her of them. I trust they will be defeated." John W. Walker to Charles Tait, November 9, 1818. Again, he wrote: "It is by everybody expected that you will follow our law in apportioning among the several counties their respective representation in the convention." John W. Walker to Charles Tait, November 18, 1818.

[47] The ratio followed was approximately one representative for each one thousand free inhabitants. John W. Walker to Charles Tait, November 9, 1818.

[48] *Journal of the Territorial House of Representatives,* 2 sess., 1818, 46. Walker wrote Tait: "But as we are more populous than any other county, an effort is making to force a limit which can operate only against us." John W. Walker to Charles Tait, November 9, 1818.

[49] *Ibid.* See Governor Bibb's message to the legislature, *Journal of the Territorial House of Representatives,* 2 sess., 1818, 14. Walker wrote Tait: "The apportionment bill passed as I expected:—but was saddled with a ryder which I certainly did not expect. . . . It was still in the power of the friends of Tuscaloosa to have put an end to the bill in the council, a majority of whom were opposed to Cahawba:—but this would have left the subject where we found it. It was, there-

Because of the rapid growth of population, it was generally expected that the Territory would soon be admitted to statehood. In November, 1818, the legislature passed a petition for statehood,[55] written by Clement Comer Clay of Huntsville,[56] and John W. Walker, speaker of the territorial House, transmitted copies to the President of the United States, Speaker of the House of Representatives, the territorial delegate, and Senator Charles Tait of Georgia.[57] Walker wrote Tait in sending him the Memorial: "I have . . . always regarded you as the effective delegate of the Territory: and you will have seen that our House payed you the

---

fore, thought best on the whole to give effect to the will of the present *accidental* majority in the House:—for if we had not been short of our Tennessee strength by the absence of four members from that quarter, it is altogether probable that the decision would have been different." Walker to Tait, November, 1818.

[50] John W. Walker to Charles Tait, November 18, December 3, 1818; Helen Collins, The Alabama Territory, 1817-1819, 45. Unpublished Master's thesis, Alabama Polytechnic Institute, 1941.

[51] *Acts of the Alabama Territorial Legislature,* 2 sess., 1818, 78.

[52] *Journal of the House of Representatives of the Alabama Territory,* 2 sess., 1818, 11. Excluding Lawrence and Marion counties, which made no returns, the census in the summer of 1818 showed 67,594 inhabitants of which 21,000 were slaves. John W. Walker to Charles Tait, November 9, 1818. In this same letter Walker argued that since the Federal Constitution came later than the Northwest Ordinance, the federal ratio should count toward the necessary "60,000 free inhabitants" for admission. He also pointed out that Congress had admitted states when they had the necessary ratio for one congressman, namely 35,000.

[53] Land might be bought from the government for $2.00 an acre and sold in six months for $20.00 an acre. In 1818 some Tennessee Valley land brought as much as "one hundred and seven dollars per acre, for agricultural purposes." James Campbell to David Campbell, March 8, 1819, Campbell Collection, Duke University Library, Durham. All Campbell letters cited hereinafter are in this collection. See also Huntsville *Republican,* March 20, 1819.

[54] Huntsville *Republican,* April 17, 1819.

[55] *Journal of the Territorial House of Representatives,* 2 sess., 1818, 44.

[56] John W. Walker to Charles Tait, November 9, 1818.

[57] *Ibid.,* November 18, 1818.

compliment of presenting to the Senate our Memorial for admission to the Union."[58] Walker asked Tait to work for the admission of Alabama, to see that the apportionment bill just passed by the legislature was used by Congress as the basis for apportionment in the constitutional convention, and to urge Huntsville in North Alabama as the convention site. He reminded Tait that he had a personal interest in Alabama's admission to statehood, since he would soon move to his plantation on the Alabama River in the Territory.[59]

Senator Tait wrote the Alabama Enabling Act, served as chairman of the committee to which it was referred, and steered the bill through the Senate.[60] He successfully combatted the efforts of the senators from Mississippi to change the boundary line of 1817 so as to make the Tombigbee River the new line, although in the end he had to leave the way open for some adjustment.[61] After passage in the Senate, the bill was sent on to the House, where the plans of George Poindexter of Mississippi to defeat the bill failed. Walker wrote Tait:

> I rejoice that the Admission Bill triumphed so gloriously over the opposition of the Mississippi Senators: and entertain very slight, if any, apprehensions from the wily machinations of the redoubtable Mr. Poindexter. I argue favorably of his final defeat, from the bad success of his first motion to refer it to his select committee. And I repose with great confidence on the justice and good sense of the House. I must confess that I do not deem very highly of the powers of our delegate [John Crowell]: and was particularly glad on that account that the Bill originated under your auspices, where it could be well shaped and ably defended. I know you have done your duty and I hope to see you a popular man in Alabama.[62]

The fight over apportionment, which had taken place earlier in the territorial legislature, was renewed in Congress. The territorial delegate, John Crowell, presented a petition from the southern section opposing the "white" basis apportionment of the last territorial legislature. This petition asserted that even on the basis of white population Mobile was entitled to more than one representative if Madison County was to have eight, since Madison County did not have eight times the number of white inhabitants of Mobile County.[63] The Huntsville *Republican* in an editorial directed against the petition from the southern part of the Territory, declared that in the last territorial census Mobile County had 982 free whites whereas Madison County had 8,780.[64] The Blakely *Sun* of Baldwin County took up the fight, asking "whether Mobile County is not of sufficient importance to have more than one representative on this important occasion."[65] Congress, however, ruled for the apportionment of the territorial legislature. The House passed the Senate bill with minor amendments on February 19, 1819,[66] and the act was signed by President Monroe on March 2, 1819.

---

[58] *Ibid.,* December 3, 1818.

[59] *Ibid.,* November 18, December 3, 1818.

[60] *Annals of Congress,* 15 Cong., 2 sess., 66, 121; John W. Walker to Charles Tait, January 19, 1819.

[61] Senators Walter Leake and Thomas Hill Williams of Mississippi reopened the old fight over the Mississippi-Alabama boundary line in an effort to make the Tombigbee River the line. Mississippi had never been happy over the settlement of 1817 and a petition and counter-petition had reached Congress from the Mississippi Constitutional Convention in 1817 and Alabama Territorial legislature in 1818. The Mississippi senators lost their fight in the committee considering Alabama's admission, but were able on the floor of the Senate to get the dispute referred to "the surveyor of the public lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama Territory." After a survey, the line was "so altered as to run in a direct line from the northwest corner of Washington county, to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagola," because it was found that the old line encroached on some Mississippi counties. However, this was a slight concession when compared with the demand of the Mississippi leaders for the Tombigbee line, which even gave the port of Mobile to Mississippi. *Annals of Congress,* 15 Cong., 2 sess., 113-114; *Journal of the Legislative Council of the Alabama Territory,* 1 sess., 1818, 10, 18; *U. S. Statutes at Large,* III, 489-492; Huntsville *Republican,* January 16, 1819.

[62] John W. Walker to Charles Tait, February 8, 1819.

The enabling act provided for the calling of a convention of forty-five members to meet at Huntsville for the purpose of writing a constitution for Alabama, which "shall be republican."[67] Also, it made a generous offer of land to the state, if the state would make certain promises to the federal government. The sixteenth section of land in each township was granted the inhabitants for schools.[68] Five per cent of the money from the sale of public lands was given for internal improvements.[69] The grant in 1818 of a section of land at Cahaba for the building of a capitol was increased by this act to sixteen hundred and twenty acres. Two entire townships were granted the Territory for a "seminary of learning" instead of the one given by Congress in 1818.[70] In return for these grants the convention was required by the passage of an ordinance to "forever disclaim all right and title to the waste or unappropriated lands lying within the said Territory" and agree not to levy a tax on land sold by the federal government within the state for five years after the sale.[71]

---

[63] Huntsville *Republican,* February 6, 1819. Walker wrote Tait that the territorial legislature considered basing representation on total inhabitants, federal ratio, and white population, but decided on the latter, which he thought was the fair basis. He admitted that South Alabama was very dissatisfied with the decision but declared that "if the people ought ever to be fairly and fully represented it is in the formation of a constitution—which the fundamental principle of all our institutions supposes to be the act of the people themselves." He also expressed the opinion that if North Alabama had lost on the issue in the House, the Council would have blocked any apportionment by deciding in her favor. John W. Walker to Charles Tait, November 9, 18, December 3, 11, 1818.

[64] Huntsville *Republican,* February 6, 1819. [65] Quoted in *ibid.*

[66] *Annals of Congress,* 15 Cong., 2 sess., 1240. The title of the act was "An Act to enable the people of the Alabama Territory to form a constitution and state government and for the admission of Alabama into the union, on an equal footing with other states." There was no enabling act for any state prior to Ohio in 1803. Since that time the title of all enabling acts had followed a similar form.

[67] See the Enabling Act for Alabama in Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and other Organic Laws,* I, 92-95. The provision that the constitution to be written "shall be republican" is to be found in each of the enabling acts prior to 1819. The enabling act did not contain the provision for two congressmen, which Walker had urged because by the time Alabama was admitted, she would have a population warranting two. Tait's original bill had so provided, but the Senate turned down the proposition as unprecedented and contrary to any census taken. John W. Walker to Charles Tait, November 15, 1818, January 16, 1819.

[68] An act of Congress approved April 20, 1818, had also provided that the sixteenth section of each township in the Territory should be set aside for schools. Each enabling act beginning with Ohio's in 1803 (except Louisiana's) had granted the sixteenth section of each township to schools.

The Alabama Territory had been in existence only fifteen months when Congress passed the enabling act. Because of the rapid growth of population, Alabama passed quickly from the status of a territory to statehood and most of the history of the Territory is geared to an anticipation of that event.[72] Few innovations in the Northwest Ordinance, which served as a constitution for the Alabama Territory, were possible during so short a period.

---

[69] Each of the enabling acts prior to Alabama's contained this provision. In the case of Ohio, Indiana, and Mississippi the provision was the same as in the Alabama Enabling Act. Three-fifths of the five percent would be used by the legislature in making internal improvements within the state and two-fifths by Congress in building roads to the state. The Illinois Enabling Act provided that two-fifths of the five percent should be used by Congress in building roads to the state and the other three-fifths on education within the state, one-sixth of which should go to a state university. In the Louisiana Enabling Act, the whole five percent was set aside for the building of roads and levees within the state.

[70] *Annals of Congress,* 15 Cong., 1 sess., 2590. James B. Sellers, *History of the University of Alabama,* I, 7. This was the most liberal grant yet made in an enabling act for a state university. There was no grant of land for a university in the Ohio, Louisiana, or Mississippi Enabling Acts. One township was granted a seminary of learning in the Indiana Enabling Act. In Illinois one township plus an additional one-sixth of the three-fifths of the income to the state from the sale of lands was granted for a seminary of learning. Where there was no gift of land to the state for a university in the enabling act, it was generally granted later. For instance, Congress voted Mississippi such a grant in 1818. The Alabama legislature later took the money from the sale of University lands and invested it in the stock of the state bank. The bank failed and the University lost much of what the enabling act had granted it. See Albert Burton Moore, *History of Alabama,* 342-343.

[71] The provision pledging the state not to tax lands sold by the federal government within the state for five years after the sale is to be found in all the enabling acts down to 1819. But the clause requiring the state convention to relinquish any claim to waste and unappropriated lands in the state is to be found previously only in the Mississippi and Louisiana Enabling Acts.

[72] See Helen Collins, The Alabama Territory, 1817-1819, 40-51 (unpublished Master's thesis, Alabama Polytechnic Institute, 1941).

CHAPTER III

THE ALABAMA CONSTITUTION OF 1819

After the passage of the enabling act, it was then the responsibility of the people of the Alabama Territory to write a constitution and present it to Congress for approval.[1] The act provided for white manhood suffrage in voting for members of the constitutional convention,[2] and specified that the election for delegates should be held on the first Monday and Tuesday in May. This permitted a campaign period of about two months.[3] Interest immediately became widespread throughout the Territory, and twenty-two candidates entered the field for eight places in Madison County, seven for three places in Limestone County, and four for the two places in Cotaco County.[4] The campaign aroused especial interest in the Tennessee Valley counties. Although Huntsville was scarcely ten years old, the area abounded in lawyers and lawyer-planters. Many of these were well educated and particularly interested in politics and political theory. The Georgia element among them was strong, although the Tennessee element was predominant.[5]

Several letters to newspapers discussed the coming convention, suggesting the needs in the organic law of the state. James Titus of Huntsville, who had been a member of the legislative council for seven years, and John Leigh Townes, a lawyer of Madison County, wrote to the Huntsville *Republican,* extolling Jeffersonian principles and eighteenth century liberalism and urging that they be incorporated in Alabama's constitution.[6] Both stated that the primary principle to be included in the document was the sovereignty of the people. They asserted that the principles of separation of powers, independence of the judiciary, and frequent elections should also be a part of the frame of government. Another letter advised against supporting a candidate just because he came from the same state as the voter, adding that the best candidate should be elected irrespective of his native state. The letter also stated that Alabama had a distinct advantage in constitution making because all her men were from other states and the convention would necessarily be made up of those who had had experience under earlier constitutions.[7] But the papers showed no evidence that any of the controversial issues, such as qualifications for franchise or basis of representation, entered the campaign.[8] Almost all agreed that men of education and experience should be elected and that the most important problem facing the convention was the admission of Alabama into the Union.

---

[1] Most of this chapter has been previously printed. Malcolm C. McMillan, "The Alabama Constitution of 1819: A Study of Constitution Making on the Frontier," *The Alabama Review,* III (October, 1950), 263-285.

[2] *U. S. Statutes at Large,* III, 489-492.

[3] See Huntsville *Republican,* March 20, 1819, for a list of the announced candidates. Walker suggested the dates for the election and holding of the convention. He wrote to Tait: "What time do you propose for holding the convention election and for the meeting of that body? Do not postpone it too long. Let the election be pretty early in the spring and the meeting of the delegates about two months thereafter. This interval will give the elected an opportunity to settle disputed points with their consciences, to establish their faith in true principles, and to arrange and systematize their respective constitutions." John W. Walker to Charles Tait, November 15, 1818.

[4] Huntsville *Republican,* April 3, 17, 1819. After the election the *Republican* editor wrote (May 8): "We must confess we experienced the most fearful apprehensions from the agitation into which the public mind has been thrown by the conflicting interests of the different candidates. And we cannot suppress our gratification at the quiet manner in which nearly 2500 freemen have assembled together and impartially settled the claims of more than twenty candidates for popular favor."

[5] Abernethy, *The Formative Period in Alabama,* 30-31.

Forty-four delegates were elected to the convention which assembled in Huntsville on July 5, 1819.[9] Of this number there were at least eighteen lawyers, four physicians, two ministers, one surveyor, one merchant, and four planters or farmers.[10] Since no information is available on the profession or occupation of the other fourteen, either before or after the convention, it may be surmised that they were the "lesser" men and that most of them were farmers or laboring men, rather than professional men. Nine of the forty-four had had prior legislative or judicial experience in the states from which they had come.[11] Harry Toulmin of Baldwin County had been president of Transylvania University, Secretary of State for Kentucky, and an Alabama territorial judge since 1804. William Rufus King of Dallas County had served in Congress from North Carolina from 1810 to 1816 and after that was Secretary of the American Legation to St. Petersburg, Russia. John Campbell, a member of the convention, described King "as about thirty-three years of age and a very gay, elegant looking fellow. He is a fluent speaker and a man of respectable talents."[12] Israel Pickens from Washington County had been a member of the North Carolina Senate and had represented that state in Congress from 1811 to 1817. Marmaduke Williams of Tuscaloosa County had been a member of the North Carolina Senate and had served that state in Congress from 1803 until 1817. John Leigh Townes had served in the Virginia legislature in 1815 and 1816. John Murphy of Monroe had been clerk of the South Carolina Senate for ten years and a trustee of South Carolina College, 1809-1818. Clement Comer Clay, Henry Hitchcock, Hugh McVay, James McGoffin, Gabriel Moore, Reuben Saffold, and John W. Walker had all been members of the Alabama territorial legislature and Samuel Garrow, Mayor of Mobile. At least eight of the men had had some college training. The potential ability of the delegates is best indicated by the fact that from them the state later obtained six governors, six judges of the supreme court, and six United States senators.[13]

---

[6] Huntsville *Republican*, April 3, 17, 1819.

[7] *Ibid.*, March 27, 1819.

[8] The past record of the candidates naturally became an issue in the election. Walker wrote Tait: "I did succeed notwithstanding the usury law, and the judgeship, and my laziness, and my obstinate adherence to my unfashionable non-electioneering canvass and a thousand *et ceteras* of objection in which I am now in no humor to fatigue you." John W. Walker to Charles Tait, May 19, 1819. Walker had voted for the usury law of 1818, which had been repealed and was now very unpopular. The reference to the judgeship concerns the proffer of an appointment to a federal judgeship by President Monroe, which Walker finally declined. Walker's enemies said this made him ineligible to the convention. Huntsville *Republican*, April 17, 1819.

[9] *Journal of the Convention of the Alabama Territory*, 3-4; Albert James Pickett, *History of Alabama and Incidentally of Georgia and Mississippi*, 635. The writer has been unable to secure the vote for candidates except in Madison County. There the vote was: Clement Comer Clay, 1683; John L. Townes, 1597; Henry Chambers, 1386; Lemuel Mead, 1377; John W. Walker, 1376; Gabriel Moore, 1308; Henry Minor, 1150; John M. Taylor, 1102; Samuel Walker, 1022; David Moore, 742; Isaac Wellbourn, 737; Robert Beatty, 579; Epps Moody, 511; Richard Shackleford, 498; James Titus, 416; William Lanier, 337; Nathaniel Power, 333; John J. Winston, 301; Allen J. Davie, 253; Thomas Miller, 230; James Hodges, 78; and Stephen Neal, 65. The first eight were elected. Huntsville *Republican*, May 10, 1819. The returns of the election in Madison County and some other counties can be found in a letter of Walker to Tait. Walker declared that he ran fifth in Madison County because he refused to make a canvass. Also, he believed his name was confused with a Samuel Walker on the same ticket. John W. Walker to Charles Tait, May 19, 1819.

[10] Most of the material used in the analysis of the personnel of the convention was obtained from Thomas M. Owen, *History of Alabama and Dictionary of Alabama Biography*, III-IV.

Of the twenty-eight members whose birthplace has been ascertained, fifteen were from Virginia, five from North Carolina, two from South Carolina, two from Georgia, and one each from England, Vermont, Delaware, and Pennsylvania. Many of those who had been born in eastern seaboard states had lived in other states as they migrated southwestward. The average length of residence in the Alabama Territory of twenty-six delegates was five years. But some of the leaders had just reached Alabama: William R. King had been in the Territory only a year, and Israel Pickens and Henry Hitchcock two years. On the other hand, Harry Toulmin, John W. Walker, Marmaduke Williams, Clement C. Clay, and Thomas Bibb had been in the Territory fifteen, nine, nine, eight, and eight years, respectively. William Wyatt Bibb, governor of the Alabama Territory, was not a member of the convention. According to the Huntsville *Republican* of August 12, 1819, he had "evinced no disposition to become a candidate." But two of his brothers, Thomas Bibb of Limestone County and John Dandridge Bibb of Montgomery County, were members.[14]

---

[11] Not all of the men of long experience in the political life of the Territory were elected. James Titus, a member of the Council for seven years and its president for three years was defeated in Madison County, in spite of the fact that there were eight places to be filled.

[12] John Campbell to David Campbell, August 11, 1819.

[13] William H. Thomas, *The Birth and Growth of the Constitution of Alabama*, 4.

John W. Walker of Huntsville, North Alabama's candidate, was elected president of the convention and John Campbell secretary. Although William R. King, Israel Pickens, and Harry Toulmin had each held more important political positions, they were from South Alabama and that region had only sixteen delegates as contrasted with North Alabama's twenty-eight. However, the fact that Walker was unanimously chosen indicates that he was satisfactory to South Alabama. He had had long experience in the Alabama Territorial legislature and was already a lawyer with an established reputation in Huntsville.[15]

The proceedings of the convention were conducted by President Walker, informally and with little decorum. Strict parliamentary procedure could hardly have been expected of a small body of forty-four men meeting under frontier conditions, and during the course of the sessions, Secretary Campbell wrote his brother in Tennessee that Walker "knew little more of parliamentary proceedings than your boy Richard, although an accomplished scholar and a man of some smartness. He is amazingly spoilt by the flattery which is lavished upon him in our new country. However, this between ourselves. . . . They will send him to the senate of the United States where I hope he may equal the expectations of his friends. He was educated at Princeton College and is now about thirty-four years of age."[16] Campbell also wrote his brother that Thomas Bibb, one of the leaders in the convention, and Alabama's second governor, "gets sometimes in his cups; and during the setting [*sic*] of the convention when in that situation would keep the house in a roar for an hour at the time."[17] Five days after the organization of the convention Campbell wrote his father in Virginia: "The convention is composed of 44 members and I have never seen in any deliberative body for the numbers more urbanity and intelligence. It would do no discredit to any country however old and respectable. . . . They will make a good constitution and the state in a very short time will take its rank among the first in the Union."[18]

---

[14] Campbell to John Campbell Sr., July 10, 1819. He also said that Israel Pickens and James Pickens, both members of the convention "are from North and South Carolina and are relatives of old General Pickens of the Revolution who behaved so well at Cowpens under Morgan."

[15] Pickett, *History of Alabama*, 636-638. Walker wrote Tait: "You are pleased to pay me many undeserved compliments over the constitution and future councils of the new state. You exaggerate this influence outrageously, I fear: but whatever it may be I shall endeavor to wield it for the good of the state and with a view to her permanent interests and respectability." John W. Walker to Charles Tait, February 8, 1819.

[16] Campbell to David Campbell, August 11, 1819. As John Campbell predicted, Walker was elected one of Alabama's first senators, but died before he could complete his term. Letters in the Tait collection indicate that Walker wanted to become Alabama's first senator, but feared the consequences for his health, as he already had tuberculosis. John W. Walker to Charles Tait, February 8, August 7, 1819. Campbell himself had been in the Alabama Territory only since January, 1819, having come from Virginia to speculate in land at Cahaba. His friends, Henry Chambers and William R. King, were responsible for his election as secretary of the convention. Campbell to David Campbell, January 15, 1819; to Edward Campbell, January 18, 1819.

To write the original draft of a constitution for Alabama, the convention appointed the following Committee of Fifteen: Chairman Clement Comer Clay, John M. Taylor and Henry Chambers of Madison County, Israel Pickens and Henry Hitchcock of Washington, John Murphy and John Watkins of Monroe, Thomas Bibb and Beverly Hughes of Limestone, William R. King of Dallas, Arthur F. Hopkins of Lawrence, Reuben Saffold of Clarke, John D. Bibb of Montgomery, Richard Ellis of Franklin, and George Phillips of Shelby County. This committee contained most of the talent and experience in the convention (eleven lawyers, three physicians, and one merchant, most of whom were also planters),[19] and was heavily weighted in favor of the planter counties of the Tennessee, the Lower Tombigbee, and Alabama River valleys. Seven counties with a slave population of 40 per cent or more had nine of the fifteen members, six with a slave population of 30 per cent and less than 40 per cent had five members, and nine with a slave population of less than 30 per cent had only one member.[20] Eight counties with a slave population of less than 30 per cent were not represented on the committee.[21] Madison County in the Tennessee Valley, with a slave population of 49.26 per cent, had three members, while North Alabama had eight and South Alabama seven members.

On July 13 Clement C. Clay reported for the Committee of Fifteen the original draft of the constitution. Among the more significant features were the requirements that a voter be a white man and a member of the militia (unless exempt by law from military service), that the federal ratio should be the basis of apportionment in the state legislature, that annual elections and annual sessions of the legislature be provided, and that a governor with veto power and some appointive power be elected by the people every two years. The document as reported in the original draft (and as finally adopted) consisted of a preamble and six articles as follows: a declaration of rights, separation of powers, the legislature, the executive, the judiciary, and general provisions.[22] The latter included sections on education, banks, slavery, the amending process and a schedule for putting the constitution into effect. The preamble contained several phrases taken from that section of the Constitution of the United States. In addition it defined the boundary lines of the new state and stated that the name should be Alabama. No other names were suggested in the convention.[23]

---

[17] Campbell to David Campbell, October 27, 1819.

[18] Campbell to John Campbell, Sr., July 10, 1819.

[19] Henry Chambers, John Watkins, and George Phillips were physicians and Thomas Bibb a merchant.

[20] According to the *Census of 1820* Baldwin, Madison, Dallas, Autauga, Monroe, Montgomery, and Washington had 40 per cent or more slaves, Lawrence, Conecuh, Franklin, Clarke, Mobile, and Limestone had from 30 to 40 per cent, and Marengo, Tuscaloosa, Lauderdale, Cahaba, Shelby, Cotaco, St. Clair, and Blount less than 30 per cent.

[21] These counties were Blount, St. Clair, Cotaco, Cahaba, Lauderdale, Marion, Tuscaloosa, and Marengo. George Phillips of Shelby, a "white county," was on the committee, but a few months after the convention he moved to Dallas County, where he became a large planter.

Few changes were made by the convention in the report of the Committee of Fifteen on the Bill of Rights. Those made were in phraseology rather than fundamental principles. Harry Toulmin, who had left England because of religious persecution, sought to make more definite the provision guaranteeing religious freedom, but the motion was defeated.[24] A significant feature of the Bill of Rights was the absence of any clause requiring belief in God or the Christian religion in order to hold office, such as existed at the time in many of the old states of the Union. Clauses forbidding imprisonment for debt except "when there is . . . strong presumption of fraud" were included, as was the case in the constitutions of all the new states, except Louisiana.

The legislative article stated clearly the suffrage requirements. Every white male person twenty-one years of age and a citizen of the United States, who had been in the state one year and the district three months, was made an elector. No property, tax-paying, or militia qualification was required, a militia qualification in the original draft having been eliminated by the committee of the whole. All of the original southern states, from which most of the delegates had come. had property qualifications for voting, although Maryland and South Carolina had abolished them by amendments in 1810. Of the new southern states Tennessee and Louisiana had property qualifications for voting and Mississippi required that one should belong to the militia in order to vote (unless exempt from military service). Kentucky, like Alabama, had none of the above qualifications.[25] Thus Alabama and Kentucky alone of all the southern states had universal white manhood suffrage in 1819.

---

[22] The original draft of the constitution as reported by the Committee of Fifteen is contained in the Mobile *Commercial Register,* July 6, 8, 10, 1830.

[23] This unanimity of opinion had not been found in Mississippi, for instance, where seventeen delegates voted to name the state "Washington." In a letter of June 17, 1819, to Tait, Walker stated that one correspondent of a territorial newspaper had suggested naming the new state Washington, "copying an abortive attempt in the convention of Mississippi."

[24] Huntsville *Republican,* July 22, 1819.

[25] Of the western states Illinois and Indiana had none of these qualifications for voting, but in Ohio one had to pay a state or county tax in order to vote. In this

No property or tax-paying qualifications for holding office, common in the constitutions of the older states, were contained in the original draft, or even considered by the convention.[26] The qualifications for a representative were that he be a white man, twenty-one years of age,[27] a citizen of the United States, and a resident of Alabama for two years and the district he represented for one year before the election. The requirements for a senator were the same, except that he be twenty-seven years of age. Voting in the new state was to be by ballot, unless the General Assembly of Alabama should otherwise direct. In some of the old states voting was still *viva voce,* but an attempt from the floor of the convention to require that type of voting in Alabama failed of adoption.[28]

The Committee of Fifteen reported in favor of using the federal ratio (that is, letting five slaves equal three white men) for representation in the state legislature. Since at the time Georgia was the only state having constitutional provision for the federal ratio in its legislative representation, it may be surmised that Georgian influence on the committee was responsible for its adoption. But, as had been the case in Mississippi two years earlier, the convention rejected the plan and set up the white population as the basis.[29] No records were kept of proceedings in the committee of the whole, but the Huntsville *Republican* reported that President John W. Walker led the fight to reject.[30] The "white counties" voted solidly for the change and the "black counties" were thus defeated in their attempt to use their slaves to gain more representation in the state legislature. The Committee of Fifteen pro-

---

study various parts of the Alabama Constitution of 1819 are compared with the constitutions of the original southern states, new southern states and western states. No comparisons are made with the constitutions of the original northern states as they had little influence on constitution making in Alabama.

[26] In all of the original southern states, except in Maryland (where the law had been repealed in 1810), there were property qualifications for holding office. Among the new southern states Tennessee, Louisiana and Mississippi had property qualifications for holding office. In Ohio, Indiana, and Illinois one had to pay a state or county tax to be eligible to the legislature. In Kentucky there were no such qualifications for holding office.

[27] The original draft provided that a member of the House of Representatives should have reached the age of twenty-three years. This was reduced to twenty-one by an amendment of Marmaduke Williams of Tuscaloosa County. The convention also reduced the minimum age for senator from thirty to twenty-seven years.

[28] According to the Huntsville *Republican,* July 22, 1819, *viva voce* voting was supported in speeches by Beverly Hughes and Arthur Francis Hopkins and opposed by John W. Walker, Clement C. Clay, and John M. Taylor.

[29] The Committee of Twenty-One that reported the original draft of the Mississippi Constitution of 1817 proposed it, but the convention made the white population the basis of apportionment in Mississippi.

[30] July 22, 1819. This is congruent with Walker's position concerning the apportionment bill before the territorial legislature in 1818. Harry Toulmin introduced a motion early in the convention that the secretary of the convention keep a record of the proceedings in the committee of the whole. William R. King, Clement C. Clay and John M. Taylor opposed the motion and it was defeated, only seven voting for it. *Journal of the Convention,* 14.

vided for frequent census taking and apportionment thereafter. This was required because of the rapid growth and shifts in population in the new state. The legislatures of 1820, 1823, 1826, and those of every six years thereafter, were instructed to have an enumeration made of the inhabitants and to apportion representatives and senators among the counties and districts of the state according to the white population of each.

One of the bitterest fights of the convention was over apportionment of senators. South Alabama was willing to permit elections to the House of Representatives on the basis of the white population, but wanted each county to be given one senator regardless of population.[31] North Alabama insisted on basing representation in both houses on white population. In the most animated debate of the session, Toulmin, Hitchcock, King, and Pickens spoke for South Alabama, and Clay, Walker, Hopkins, Taylor, and Townes for North Alabama.[32] Again, as in the case of the abolition of the federal ratio, the latter section won: it was provided that after each census the legislature should fix by law the total number of senators and divide the state into the same number of senatorial districts (with as near the same number of white inhabitants as possible), giving each district one senator.

The legislative report of the Committee of Fifteen contained provisions concerning the capital of the state. The enabling act had granted a tract of land for the purpose at Cahàba. With the rapid increase and shifts in population it was realized that this place would probably not remain the capital. It was not the geographical center of the state and it was impossible to predict the center of the future population. North Alabama wanted the capital located in that part of the state, although Cahaba was more satisfactory to them than had been St. Stephens, the capital of the Alabama Territory. The southern counties were of course satisfied with Cahaba. The Committee worked out a compromise on the question, which, with minor amendments, was adopted by the convention and made a part of the constitution. It provided that the first legislature should meet at Huntsville, but that all subsequent sessions until 1825 should convene at Cahaba. In that year the permanent capital, which might or might not be Cahaba, was to be chosen by the legislature.[33] This fight foreshadowed the long struggle between North and South Alabama and between the towns of the state for the capital.

In spite of the ardently professed belief in separation of powers, the legislative department emerged from the convention the strongest department of the government. The legislature was given the appointive power which later Alabama conventions were to pass to the governor.[34] In denying the chief executive the appointive power, the convention followed the precedent of other states which had met during and for some years after the American Revolution. The legislature appointed the secretary of state, state treasurer, comptroller of public accounts, supreme court judges, circuit judges, inferior judges and other officials. The original draft provided for the appointment of inferior judges by the governor, but the convention took this power from him.

---

[31] Huntsville *Republican,* July 22, 1819. [32] *Ibid.,* August 5, 12, 1819.

[33] The original draft provided that a permanent capital should be chosen by the legislature in 1826, but the convention added that if it were not moved in 1825, it would remain permanently at Cahaba. *Journal of the Convention,* 22; Huntsville *Republican,* July 15, 1819; William H. Brantley, *Three Capitals: A Book About the First Three Capitals of Alabama,* 46-47.

The report of the Committee of Fifteen provided for annual elections and annual sessions of the legislature. In thus establishing frequent elections and sessions the convention complied with the idea of sovereignty of the people, a principle to which they constantly alluded in debate. Judging from the newspapers and the *Journal of the Convention,* annual elections and sessions encountered no opposition, but they were soon to become one of the most controversial issues in Alabama politics.

The report of the Committee of Fifteen on the executive department provided for election of the governor by the people for a term of two years.[35] In this respect it was like the constitutions of the new southern and western states, but unlike those of the older southern states which provided for election by the legislature. It contained no property holding qualifications for the office, although many of the new states and all of the old states required them. It required that the governor be thirty years of age and a resident of the state at least four years prior to his election. A unique feature was the provision that only a native citizen of the United States could be governor.[36] This aspect of the original draft, borrowed from the United States constitutional provision in regard to the presidency, aroused opposition, but an attempt to strike it out failed. The governor was limited to two terms in succession.[37] The legislative branch of the government during the colonial period had increased or diminished the chief official's salary at will. In order to make him independent of the legislature in this respect, the 1819 convention provided that the governor's salary could not be increased or diminished during the term for which he was elected.

---

[34] This was characteristic of all the original southern state constitutions, except Maryland's, and all the new state constitutions, except those of Louisiana and Kentucky. In these states the governor was given the appointive power.

[35] In all of the original southern states the governor was elected by joint ballot of both houses of the legislature. In all of the new states he was elected by the people. In Virginia, Maryland, and North Carolina he was chosen annually and in South Carolina and Georgia biennially by the General Assembly. Among the new states, Ohio, Tennessee, and Mississippi elected the governor biennially; Kentucky, Louisiana, and Illinois quadrennially; Vermont annually; Indiana triannually.

[36] The provision that only a native citizen may be governor is not found in the constitutions of any of the original southern states or new states. The provision was probably taken from the United States Constitution, which provides that only a native citizen can be President or Vice-President of the United States. Only three members of the convention voted to strike out this provision, *Journal of the Convention,* 36.

[37] There were regulations against the governor serving continuously in all the original southern states, except Georgia; all the new states, except Vermont, placed similar regulations upon the governor.

Obviously, the trend was toward weakening the power of the governor as outlined in the original draft. As a result of a motion of Thomas Bibb, the convention took from the governor the power to appoint (with the advice and consent of the Senate) inferior judges and militia officers above quartermaster-general. The governor was made commander-in-chief of the militia, but was not given power to appoint any of the officers. The original draft had provided (Article IV, Section 14) that the governor "shall nominate and by and with the consent of the senate, appoint and commission all officers, the appointment of whom is not otherwise directed by this constitution," but this section was eliminated. A determined effort to strike out that part of the original draft which gave the governor the veto power was led by Marmaduke Williams and John Murphy. They were opposed by John W. Walker, Clement C. Clay, Arthur Francis Hopkins, and Beverly Hughes. The move might have been successful had not Clay argued that the majority necessary for over-riding the veto be reduced from two-thirds, as provided in the original draft, to a mere majority.[38] This was carried and those who wanted to deny the governor the veto power were defeated. However, as is apparent, they had succeeded in drastically limiting that power.

The original draft provided for the election of sheriff, the county executive officer, by the people. Although the report was adopted, speeches in opposition to popular election were made by Chambers, Hopkins, Taylor and King. Clay, Hughes, Hitchcock, McVay, Walker, and Toulmin favored the plan. The opponents did not agree on how he should be chosen. Some favored appointment by the county court, as in Virginia, North Carolina, Kentucky, and Tennessee; others preferred election by joint ballot of the legislature, as in South Carolina and Vermont; and others appointment by the governor with the consent of the senate, as in Louisiana. The opposition to the provision in the original draft against the sheriff succeeding himself was also defeated. In this case Clay, Pickens, and Hopkins supported the original report and Taylor and Williams opposed it.[39]

The original draft of the constitution did not provide for a lieutenant governor and there was no effort in the Convention to add one by amendment. The president of the Senate and then the speaker of the House were placed in line of succession to the governor.[40] Other executive officials were the secretary of state, state treasurer, and comptroller of public accounts, all of whom were elected by joint ballot of the two houses of the legislature.

---

[38] Mobile *Gazette,* August 25, 1819. Ironically, Territorial Governor Robert Williams, brother of Marmaduke Williams, had done more than anyone else to create fear of the executive branch of the government by his fight with the legislature, 1807-1809.

[39] In Maryland, where the 1776 constitution had given the people the right to elect sheriffs, and in Ohio, Indiana, Illinois and Mississippi they were elected by qualified voters.

The executive article of the Alabama Constitution of 1819 reflects the Revolutionary and post-Revolutionary feeling against the governor.[41] This attitude had been accentuated in the Mississippi Territory by experiences with governors, especially by the fight between the people and Governor Winthrop Sargent and between the territorial legislature and Governor Robert Williams.[42] Under territorial government the executive branch had been much the strongest. During the colonial period the legislature paid the governor and used this power to control him, but this control was missing in the case of United States territories, since the governor was paid by the federal government. The fear of the executive branch of the government and the reduction of its power to a minimum by the convention was a natural reaction to earlier experiences.

The first draft of the judiciary article provided for a supreme court, circuit courts, and such inferior courts as the legislature should establish. All judges of the circuit and supreme courts were to be elected by joint ballot of the legislature. As already stated, the report provided that inferior judges were to be appointed by the governor with the consent of the Senate, but the convention decided they should be elected by the legislature. The original draft provided that "each court shall appoint its own clerk, who shall hold office during good behavior." Liberals in the convention moved that clerks should be elected by the people for a term of four years.[43] They had precedent behind them, for by amendment in 1808 Georgia had made her clerks of court elected by the people and the Indiana constitutional convention of 1816 had given their election to the qualified voters.[44] Clay, Toulmin, and George Phillips led the fight against election by the people, but the democratic provision prevailed.[45]

---

[40] At this time about half of the state constitutions gave the president of the Senate preference in succession over the speaker of the House. The president of the Alabama Senate was soon to become governor in Alabama. William Wyatt Bibb, Alabama's first governor, died in office, and his brother, Thomas Bibb, president of the Senate, succeeded him.

[41] Popular feeling against the executive branch is somewhat reflected by the suggestion of a South Alabama newspaper that the convention provide for no governor "lest he trans-magnify himself into a king." John W. Walker to Charles Tait, June 17, 1819.

[42] See Clarence E. Carter (ed.), *Territorial Papers of the United States,* V, 63-103, 614-636.

[43] *Journal of the Convention,* 24.

[44] In Tennessee, Kentucky, Louisiana, Maryland, Ohio, Illinois, Virginia, and Mississippi clerks of court were appointed by the respective courts. In North Carolina, South Carolina, and Vermont there were no constitutional provisions concerning the matter.

Life tenure for judges was recommended by the Committee of Fifteen, but an amendment was offered from the floor to limit their tenure to six years. The conservatives charged that this move would make the judges subservient to the legislature, as they would come before that body for re-election, and it was defeated by a vote of 25 to 18, all but two members of the Committee of Fifteen voting against it.[46] The "white counties" voted almost solidly in its favor.[47] There is no evidence in the *Journal,* newspapers, or letters of the delegates to indicate that the election of judges by the people was an issue in the convention, though there was some precedent at the time. By an amendment to her constitution in 1812, Georgia had provided for the popular election of inferior judges and in Indiana in 1816 a similar provision had been passed.[48] But delegates to the Alabama convention of 1819 believed that popular election of judges would strike at the independence of the judiciary. However, this matter became a leading issue in Alabama politics soon after the Constitution of 1819 was completed. In view of the criticism in recent years of the advanced age of judges, it is interesting to note that the convention adopted the section of the original report which forbade the appointment of a judge seventy or more years of age, or his continuance in office after having reached that age.[49]

An entire section of the constitution was given to education. Quoting the Northwest Ordinance, the article asserted that "schools and the means of education, shall forever be encouraged in this state." The enabling act gave a sixteenth section of land in every township to schools,[50] and the convention provided that the General Assembly of Alabama should pass laws to make certain that the lands were used for the object granted and to preserve these lands from "unnecessary waste and damage" and to protect the two sections of land given for a university. The convention struck out the provision in the original draft that none of the land given for a state university could be sold before 1825.

One of the most unusual features of the report of the Committee of Fifteen was the long and detailed division given to the establishment of banks. The economic situation in the country deeply impressed the delegates. Land speculation was rife. Lands near Cahaba in the Black Belt of Alabama had sold as high as $150 an acre in 1818. Partly as a result of speculation, panic had struck the nation, especially the West, and many state banks that had taken land as collateral had collapsed. In an effort to prevent the recurrence of a similar situation in Alabama, the convention placed many restrictions on state banks. Only one could be established and the legislature could not create more than one branch at any one session, and this required a two-thirds vote. At least half of the minimum capital of $100,000 had to be actually in hand before a bank could begin operation.[51] At least two-fifths of the capital stock was to be reserved for the state, and the state was to be given a proportionate control of the bank. Any bank that suspended specie payments would have to pay the holders of its notes 12 per cent interest, unless the General Assembly upon investigation should approve of its course.

---

[45] *Journal of the Convention,* 25, 27, 31.

[46] *Ibid.,* 29.

[47] Twelve of the eighteen votes came from nine counties with a population of less than 30 per cent slaves. Only three of these delegates voted against the amendment. Eight of twenty-nine delegates from counties with 30 per cent or more slaves voted for the measure.

[48] In Illinois, Ohio, Vermont, Mississippi, Tennessee, North Carolina, South Carolina, and Virginia they were elected by joint ballot of the legislature. In Kentucky, Louisiana, and Maryland they were appointed by the governor with the consent of the Senate.

[49] *The Constitution of the State of Alabama, Adopted August 2d, 1819,* 16.

[50] Francis N. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws . . . ,* I, 92-95.

Another unusual feature of the original report, which finally became a part of the Constitution of 1819, was the number of restrictions placed on slavery. Only the constitutions of Mississippi, Georgia, and Kentucky, each of which the Committee of Fifteen followed in some respect, had similar provisions. Both slavery and the rights of the slaves were guaranteed. The legislature was forbidden to free a slave without the consent of his owner. However, it was empowered to pass laws stating the conditions under which manumission might be permitted. The legislature could not prevent immigrants from bringing their slaves into the state so long as Alabama permitted slavery, but the importation of slaves as merchandise could be forbidden by the legislature.[52] Slaves guilty of high crimes in other states might be excluded from the state. Many provisions for the protection of the slaves were incorporated. The legislature was empowered to pass laws "to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injures to them extending to life and limb," and no slave could be deprived of the right of trial by jury for crimes higher than that of petty larceny. One provision stated that "any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the life offence had been committed on a free white person." The section of the original draft which had stated that this clause was not to apply in the case of a slave who was accidentally killed during correction was striken out, thus giving the slave even more protection. The clause, however, was not to apply in case of an insurrection. Altogether, these sections seem very liberal, when contrasted with constitutional provisions (or lack of them) for protecting slaves in other states.

---

[51] The original draft required a two-thirds vote for establishing the bank and its branches and stated that the entire capital stock should be in hand before the bank could begin operations.

[52] This provision was taken from the constitutions of Mississippi and Kentucky. No provision was included against the foreign slave trade, since that had been abolished nationally in 1808. The constitution of Georgia of 1798 had a provision against the foreign slave trade.

The committee's report made no provision for calling a constitutional convention for future change in Alabama's organic law, but did outline a complicated process for amending the constitution. The legislature was required to pass a proposed amendment by a two-thirds vote and submit it to the voters in the next general election. If a majority of the voters for representatives approved the proposed amendment, it must secure a three-fourths majority of the following legislature. Only after it had overcome these hurdles did it become a part of the constitution. The convention adopted this plan after changing the three-fourths majority required of the legislature in the last stage to two-thirds, as proposed by Thomas Bibb.[53] Although complicated, this section is one of the first in the United States to give the people direct participation in the amending process.[54] The idea of two successive legislatures passing a proposed amendment by more than a mere majority vote was in the constitutions of Maryland, South Carolina, and Georgia, but the democratic idea of participation by the people is previously found only in the Illinois Constitution of 1818,[55] and it is important to note that no Alabama legislature, operating under the 1819 constitution, ever turned down a proposed amendment which had secured a majority vote of the people.

A committee was appointed on the offer of lands by the federal government and instructed to write an ordinance accepting the propositions.[56] But differences of opinion developed in the committee and in the convention. One group led by Toulmin contended that only these concessions to Alabama and not her admission to the union depended on her acceptance of this proposition.[57] The other group led by Clay, Hitchcock, and Taylor contended the admission of Alabama itself depended on its acceptance. The enabling act stated that this proposition was for the convention's "free acceptance or rejection" but was not explicit as to whether free rejection might not mean continuance in the territorial stage. Toulmin argued that Congress could limit the admission of Alabama only to the extent that Alabama should have a free republican government. In support of his position he pointed to the unsuccessful efforts of Congress at its last session to restrict Missouri as to slavery, and drew the inference that Congress had no right to place limitations on Alabama as the price of admission.[58] Those who contended that Congress might place limitations on the Territory as the price of admission reviewed the history of the limitations placed on the territories by Congress. Beginning with Ohio in 1803 similar clauses had been placed in all the enabling acts. The enabling acts of Louisiana and of Mississippi made their admission into the union dependent on their acceptance of the proposition. The "free acceptance or rejection" clause was in all enabling acts prior to 1819 and all conventions had accepted these propositions. The *National Intelligencer* believed that Alabama would not be admitted unless she accepted the propositions. That paper declared that Alabama would have to recognize the federal government's right to the title of all lands under the Northwest Ordinance and the Georgia Articles of Cession and agree not to tax them for five years before Alabama would be admitted.[59] As the debate continued it became largely theoretical, and a majority of the convention was at any time ready to vote for acceptance. The convention voted to agree to the federal government's propositions in return for lands for the capitol and university, the five per cent fund, and all salt springs.[60]

---

[53] Mobile *Gazette,* August 25, 1819.

[54] Walter F. Dodd, *The Revision and Amendment of State Constitutions,* 123.

[55] Thorpe, *The Federal and State Constitutions,* II, 1007.

[56] *Journal of the Convention,* 11.

[57] Huntsville *Republican,* July 15, July 26, 1819.

[58] *Ibid.*

The Alabama Constitution of 1819 was not submitted to the people for ratification;[61] indeed, there is no evidence in the newspapers or the *Journal* that such a plan was considered. This is not surprising since none of the original southern states nor any of the new states had yet submitted a constitution to the approval of the people.[62] The enabling act for Alabama made no such requirement. In fact, that of Minnesota, in 1857, was the first to require submission of the constitution to the people.[63]

It is apparent that most of the changes made by the convention in the report of the Committee of Fifteen were basic and rendered the Alabama Constitution of 1819 a more democratic document. On July 26 the St. Stephens *Halcyon* reported that the original draft "would undergo great alterations. Most of the professional men were on the committee; but there are many objections raised by plain men, who though they make no figure in the house, are men of good sound sense and republican principles." These "plain men," mostly from the "white counties," abolished the militia qualification for suffrage, defeated the efforts of the planters to count three-fifths of the slaves as a basis of representation in the state legislature, reduced the minimum age for senator and representative, curtailed the power of the governor over legislation by allowing the legislature to pass a bill over his veto by a mere majority vote rather than a two-thirds vote, reduced residence requirements for voting and for election to the senate, and made the clerks of court elective by the people.

---

[59] *National Intelligencer* (Washington, D. C.), August 6, 1819.

[60] *Journal of the Convention,* 20; St. Stephens *Halcyon,* July 26, 1819.

[61] Thorpe, *op. cit.,* I, 96, and Frederick L. Paxson, *History of the American Frontier, 1763-1893,* 210, both erroneously state that the Alabama Constitution of 1819 was submitted to the people.

[62] Dodd, *The Revision and Amendment of State Constitutions,* 65.

[63] *Ibid.,* 64.

On August 2 all forty-four members of the convention signed the Constitution of 1819, and provided that an official copy of the document be made under the direction of President John W. Walker and "transmitted to the Congress of the United States."[64] Congress accepted the document by passing a resolution of admission on the first Monday in December, 1819. President James Monroe signed it on December 14 and Alabama became a state on that day. The resolution declared the Alabama constitution to be "republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio. . . . so far as the same have been extended to the said territory by the articles of agreement between the United States and the state of Georgia."[65]

The Alabama Constitution of 1819 was definitely a mixture of liberalism and conservatism, the product of the past as well as a forerunner of the future. It was liberal in several particulars. There were no property, tax-paying, or militia qualifications for voting or for office holding. The people were given participation in the amending process. The white basis rather than the federal ratio was adopted as the basis of representation in the state legislature. The governor was made elective by the people instead of being elected by the legislature as in the old states, and sheriffs were made elective by the people instead of being appointed by the county court. The clerks of court were made elective by the people. Liberal clauses were included protecting the rights of slaves.

On the other hand, the document was basically conservative, when judged by the standards of frontier democracy a decade later. One of the tenets of this democracy was the election by the people of all their public officials. In Alabama the people could elect the executive, the legislature, the sheriffs, and clerks of court, but all other officials were appointed by joint vote of the legislature. Under the Constitution of 1819, once the people elected the legislature, government passed to a great extent into the hands of that body.

The article on the judiciary also shows a basic conservatism. In speeches, articles, and editorials the leaders of the Alabama Territory had extolled the principle of an independent judiciary. The convention reflected that attitude and there was no effort to make even the inferior judges elective by the people. An effort to reduce their tenure from life to six years failed.

As one reads the first Alabama constitution and compares it with those of other states, one recognizes the influences of constitutions of

[64] *Journal of the Convention,* 38-39.

[65] *U. S. Statutes at Large,* III, 608.

other states and the workings of democracy on the frontier in which the creators found themselves. Constitution making among American states had become a constant process, each borrowing, adding to, and building on what others had done. Since Alabama had formerly been a part of the Mississippi Territory and since conditions in Alabama paralleled conditions there, it is not surprising that Alabama's Constitution of 1819 was similar in many respects to that of Mississippi.[66] Its wording and form followed more nearly Mississippi's than that of any other state, but basically the two were quite different. Alabama's was much more democratic in such matters as suffrage, office holding, popular elections, protection of slaves, the amending process, religious restrictions, and education.

The Alabama Constitution of 1819 was the product of two factors at work in the state. One, the frontier, tended to bring all men to the same level, property or no property, social position or no social position. At the same time, and in spite of the youth of the state, there was in the Tennessee, Alabama and lower Tombigbee River valleys already an aristocratic element based on the plantation slavery system, an element largely composed of planters from Georgia, Virginia, the Carolinas, and Tennessee. They were educated and well trained for leadership and already steeped in the plantation-slavery tradition when they reached the territory. They furnished the leadership of the convention and dominated the Committee of Fifteen which wrote the liberal original draft of the constitution. However, to the "plain men," those who came mostly from the "white counties," must go the credit for amending the document into an even more democratic constitution.

[66] Albert B. Moore, *History of Alabama,* 101, states: "The constitution was strikingly like that of Mississippi and probably was patterned after it." Abernethy, *The Formative Period in Alabama,* 43, also states that it "was modeled largely after that of Mississippi."

CHAPTER IV

JUDICIAL TENURE, BIENNIAL SESSIONS, AND REMOVAL OF THE CAPITAL AMENDMENTS, 1819-1846

Agitation for amending the Constitution of 1819 began with the first session of the state legislature and centered around the conservative judiciary article of the constitution. Those who had failed to limit the tenure of judges in the convention were now determined to do so by amendment. In 1819, an amendment providing for four-year tenure was introduced, but failed to pass.[1] From this time until the legislature submitted the question to the people in 1828, a proposed amendment for limited tenure for judges was before almost every legislature.

Limited tenure for judges was hastened by an unpopular decision of the Alabama Supreme Court in 1827. In 1818 the Alabama territorial legislature had passed a law removing all restrictions on interest rates in the state.[2] After the removal of restrictions interest rates soared, and in 1819 the legislature repealed the law of 1818 and limited interest rates to eight per cent.[3] In 1824, the Alabama Supreme Court ruled that in contracts made under the law of 1818 any stated rate of interest might be collected to maturity, but that in case the note was not paid at maturity only eight per cent could be collected from maturity until paid.[4] In the legislative session of 1825, William Kelley, speaker of the House of Representatives, who belonged to the "Popular Party" as against the "Royal or Aristocratic Party," sought to secure a repeal of a statute of limitations which prevented the collection of refunds on excessive interest rates paid after maturity under the usury law. He failed to secure repeal and was somewhat discredited himself when it became known that as lawyer in the refund cases his fee would be 50 per cent of thousands of dollars collected.[5] Nevertheless, in 1827, a case was brought before the court and as expected the Supreme Court ruled that the statute of limitations prevented recovery of any interest already paid under the "big interest" contracts.[6] The decision was unpopular among the masses of the people and Kelley made the decision the leading issue in the election of 1828 in the Tennessee Valley. He won a seat in the legislature by a bitter appeal to the debtor as against the creditor class and the court.[7] When the legislative session opened, he brought charges against three of the judges for incompetence and neglect of duty, evidenced by their reversal of circuit court decisions where they had been the presiding judges.[8] The constitution provided that "for wilful neglect of duty or other reasonable cause, which should not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the General Assembly."[9] The "Trial of the Judges" began before the Alabama Senate, Kelley acting as the prosecutor, while the accused judges, Reuben Saffold, John White, and Anderson Crenshaw, made their own replies, and were further defended by some of the best lawyers in the state.[10] After four days of testimony, the Senate exonerated the judges by a large vote,[11] but Kelley had inspired a distrust of the courts which led to a more complete control over them by the legislature.[12]

---

[1] *Senate Journal* (1819-1820), 44, 56. The vote in the Senate was 13 noes to 6 ayes.

[2] Harry Toulmin, *Digest of the Laws of the State of Alabama,* 443. In 1818, John W. Walker wrote Charles Tait: "Our little legislature made one bold experiment at its last session: in the good or evil of which I am entitled to my full share. This was the total abrogation of the usury laws. Money is left like other things to find its level of value. Any rate of interest fairly stipulated by the parties to a bonafide contract, and expressed in writing, etc., is legal and recoverable. When interest is not fixed in the contract, the rate is fixed at 8 percent—what think you of our system?" John W. Walker to Charles Tait, September 22, 1818. The law was passed at the height of the land boom and of course favored the creditor class and especially the Huntsville Bank. The best discussion of the law and how it was tied in with the Huntsville Bank and "Royal Party" and became a bitter debtor-creditor issue in early Alabama politics is to be found in Ruth Ketring Nuermberger, "The 'Royal Party' in Early Alabama Politics," *The Alabama Review,* VI (April, 1953), 81-98; *ibid.,* VI (July, 1953), 198-212. She concludes that there was in reality no "Royal Party" but rather "a loose combination of capitalists who found the 'Usury Law' and the Huntsville Bank useful aids in gaining fortunes through speculation. The fact that these men in the main identified themselves with the Georgia machine politically gave some real foundation for calling them the "Royal Party." Victims of the 'Usury Law' and poor settlers who had struggled through the Panic of 1819 were equally ready to blame their troubles on banks and capitalists." *Ibid.,* 212.

[3] Harry Toulmin, *Digest of the Laws of the State of Alabama,* 444.

In January, 1828, the legislature passed a resolution by the necessary two-thirds vote in each house submitting to a vote of the people in August, 1828, the question of limiting the tenure of judges to seven years.[13] If the proposed amendment received the majority vote of electors voting for representatives in the next election, the constitution further required that it secure a two-thirds vote of each house of the succeeding legislature. Under the proposed amendment the judges would be divided by lot into seven classes and the legislature would elect one-seventh of them each year. Defeated in August, 1828 on a technicality, the amendment was resubmitted in August, 1829.

---

[4] Henry Minor, *Reports of Cases Argued and Determined in the Supreme Court of Alabama,* I, 164.

[5] Nuermberger, "The 'Royal Party' in Early Alabama Politics," *The Alabama Review,* VI, 202.

[6] George N. Stewart, *Reports of Cases Argued and Determined in the Supreme Court of Alabama,* I, 81.

[7] Albert Burton Moore, *History of Alabama,* 120.

[8] Kelley also charged that the judges had taken advantage of the absence of one of their colleagues to reverse a case on usury that came up from the Circuit Court. *Senate Journal* (1828-1829), 139; Mobile *Commercial Register,* January 21, 1829.

[9] Article V, Section 13.

[10] Henderson Middleton Somerville, "Trial of the Alabama Supreme Court Judges in 1829 . . . ," *Alabama State Bar Association Proceedings,* June, 1899, 65.

[11] *Senate Journal* (1828-1829), 193.

[12] A committee of the House exonerated Chief Justice A. S. Lipscomb of separate charges brought by a personal enemy, George F. Salle, during the legislature of 1827-1828. *Alabama Journal,* December 14, 21, 1827, January 18, 1828.

Opponents of the proposed amendment attacked it because they claimed it would strike at the independence of the judiciary and was an innovation which could be supported only as an experiment. Advocates of the proposal argued that it was democratic and would make the judges more amenable to the will of the people.[14] They asked why the judges alone of all officials should be elected for life. One representative declared that the amendment "would tend to preserve the principle much cherished in our institutions of rotation. This would give all qualified individuals of ever rank in life a chance, in turn."[15] The more radical of the proponents of a limited tenure for judges tried unsuccessfully to make rotation in the office of judge necessary by attaching to the proposed amendment a provision "that judges should not be re-elected within two years after their term of service expired."[16] After the failure to remove the judges in 1829, the proponents of the proposed amendment said that it was more necessary than ever, since the constitutional method of removing incompetent and inefficient judges for non-impeachable offenses had failed.[17]

The newspapers of the state were divided on the issue. In the campaign for ratification, the Tuscaloosa *Republican* and Huntsville *Democrat* supported the proposed amendment but the Huntsville *Southern Advocate* and Mobile *Commercial Register* were violently opposed.[18] The Huntsville *Southern Advocate* asserted that "it is one of the most important questions, that has been agitated before the people and left to their decision, since the formation of our state government. We should at all times be extremely cautious how be tamper with an instrument so sacred as the constitution of a state, which is not intended as a mere nose of wax, to be moulded and altered to suit the whims and caprices of the vicious and designing; but more especially when a ruinous innovation is sought to be made, in a point so vitally important as the independence of the judiciary."[19] In a later editorial the same newspaper called on the people to "preserve the independence of the judiciary"; the editor added that he hoped "to never see the day when the judges, those to whom are entrusted the dearest of our rights—the deciding upon our property, liberty, and lives, will be reduced to the level of constables electioneering for office, with a bottle of whiskey and an oyster supper."[20] The Mobile *Commercial Register* said that "there is great danger in thus approaching the foundations of the government. As a general rule, it is better to put up with provisions of doubtful utility, than to disturb the landmarks of the constitution for the sake of speculative improvement."[21]

---

[13] *Acts of the General Assembly of the State of Alabama* (1827-1828), 157. Hereinafter cited as *Acts of Alabama.* Brown says the resolution was passed because the people thought the judges were too independent and had favored the bank in some cases. William Garrott Brown, *A History of Alabama,* 156.

[14] Mobile *Commercial Register,* January 30, 1829.

[15] *Ibid.*

[16] *Ibid.*

[17] Montgomery *Alabama Journal,* July 21, 1829.

[18] The Huntsville *Southern Advocate* "tended to favor the side of wealth and property and later became an important organ of the Whig Party" in Alabama; while the Huntsville *Democrat* championed the cause "of the people." Nuermberger, "The 'Royal Party' in Early Alabama Politics," *Alabama Review,* VI (April, 1953), 90-91.

The issue was essentially one between the conservatives and the liberal forces in the state at a time when party lines were not closely drawn. The liberals were not afraid of the people and were seeking a means to make the judiciary more responsive to the will of the people. The idea of direct election of the judges by the people was still too radical for acceptance, but with a limited tenure the people could indirectly control the judges through the legislature.

When submitting the proposed amendment in 1828, the legislature provided that the election official should ask each voter whether he voted for or against the proposed amendment and keep a record of the name of each voter and how he voted.[22] The sheriff of each county was to send the returns to the secretary of state within thirty days after the election. Many election officials failed to follow the law. As a result there was much confusion as to whether the amendment had received a majority of those voting for representatives. Some newspapers reported that it had received a majority, others that it had not. When the legislature met in November, 1828, it appointed a joint committee to ascertain the vote on the proposed amendment. After a study of the returns in the secretary of state's office the committee reported that the returns were taken correctly in sixteen counties, informally with no names in fourteen counties, and not reported at all from four counties.[23] Of the 25,774 total aggregate vote, 16,833 voted for the proposed amendment, 6,804 against, and 2,137 voters were silent on the question. But, because of irregularities in the voting, the committee reported "that the General Assembly cannot proceed to the ratification of the proposed amendment of the constitution."[24] The House of Rerpresentatives and Senate concurred in the report and refused to ratify the amendment.[25]

---

[19] Huntsville *Southern Advocate,* July 25, 1828.

[20] *Ibid.,* October 10, 1828.

[21] Mobile *Commercial Register,* January 21, 1829.

[22] *Acts of Alabama* (1827-1828), 46.

[23] *Senate Journal* (1828-1829), 75.

The legislature decided to resubmit the question to the people in the next election, but provided for six-year tenure for judges instead of the seven-year term.[26] In August, 1829, the people approved the proposed amendment by a vote of 23,199 for the amendment, 6,925 against and 466 silent.[27] Counting the silent votes with the votes against, a joint committee reported a majority of 14,708 for the proposal. The legislature ratified the proposed change in 1830 and it became the first amendment to the constitution. An analysis of the vote by counties indicates that much of the opposition vote came from North Alabama. Tuscaloosa and other North Alabama counties voted against the amendment because of the fear that if the constitution were once amended, it might then be amended so as to strike out the provision against removing the capital from Tuscaloosa.[28]

Agitation for a biennial sessions amendment to the constitution began in the eighteen-twenties.[29] A proposal for biennial sessions was originally attached as a rider to the judicial tenure amendment, but its opponents were able to separate the two and defeat the former.[30] The next session of the legislature, however, passed the proposed biennial sessions amendment, and it was submitted to the people in August, 1830.[31] It provided that biennial elections and biennial sessions of the legislature were to replace annual elections and annual sessions. Members of the House of Representatives would be elected for two years. Senators would be elected for four years, one-half to be elected at each biennial election, instead of being elected for three years, with one-third elected annually.

The proponents of the proposed biennial sessions amendment argued that annual sessions of the legislature made for instability of legislation; that laws were so frequently altered and repealed that the people knew not what they were; and that biennial sessions would reduce the number of special and local laws.[32] They declared that frequent elections, with the practice of electioneering by giving barbecues and treating with whiskey, corrupted the morals of the people, kept them constantly agitated, and made them turbulent and intemperate citizens. Biennial sessions and biennial elections would be much less expensive, and would make possible substantial reductions in taxation. If necessary, the governor could call a special session at any time. Actually, the biennial sessions amendment grew out of an increasing nation-wide distrust of the legislative branch of the government, which had been made more powerful than the other departments by all the early constitutions, including the Alabama Constitution of 1819.

---

[24] *Ibid.* The Tuscaloosa *Alabama State Intelligencer,* April 10, 1829, declared that "in consequence . . . of the negligence of returning officers this most salutary and important amendment in the fundamental law of the land has been . . . defeated, notwithstanding it bore the sanction of approbation by a considerable majority of the people of Alabama."

[25] *Senate Journal* (1828-1829), 90; Mobile *Commercial Register,* January 12, 1829.

[26] *Acts of Alabama* (1828-1829), 94.

[27] *Senate Journal* (1829-1830), 105.

[28] Tuscaloosa *Chronicle,* July 20, 1829. In 1825, Tuscaloosa had become the new capital by the narrow margin of one vote in the Senate. In the House, the crucial vote was on a substitute bill that would have moved the capital to Autauga County, which failed by one vote. The capital could not be moved again without a constitutional amendment. *House Journal* (1825-1826), 71; Brantley, *Three Capitals,* 174-175, 182-185.

[29] Cahaba *Press and Alabama State Intelligencer,* December 21, 1822, December 6, 1823, December 11, 1824, January 7, 1826; Huntsville *Southern Advocate,* December 5, 1828; Huntsville *Alabama Republican,* September 17, 1824.

[30] Mobile *Commercial Register,* February 4, 1829.

[31] *Acts of Alabama* (1829-1830), 79. The *Alabama State Intelligencer,* June 4, 1830, contains a copy of the joint resolution submitting the proposed amendment.

The opponents of the proposed amendment claimed that it was undemocratic. They declared it would make the legislature less responsive to the will of the people, increase the power of the representatives, and decrease the power of the people to govern themselves. They argued that biennial sessions would be not less expensive than annual sessions because the regular sessions of the legislature would be much longer and there would be more special sessions. They pointed out that Tennessee's biennial sessions were over twice as long as Alabama's annual sessions. They declared that Alabama as Tennessee would have many special sessions of the legislature if the proposed amendment were adopted. They emphasized the fact that the legislature had large elective powers which it needed to exercise annually, especially since the adoption of the judicial tenure amendment. They said that if the biennial sessions amendment were adopted, United States senators and other officials would often have to be elected eighteen months in advance. They argued that if the legislature met only biennially, the power of the governor would be greatly increased through his power to make recess appointments; and numerous recess appointments would cause instability in government.

Most of the newspapers of the state opposed the change, many of them attacking it as undemocratic. The Huntsville *Democrat* declared that "the history of past ages abundantly testifies, that the people—for whose safety governments were instituted—are more happy, independent and free from abuse and oppression, when they have reserved to themselves the right to govern themselves; and their prosperity is more or less secure, in proportion to the vigilance with which they guard the prerogatives of retaining all essential power in their own hands. . . .

---

[32] The arguments pro and con on this issue given in this chapter are taken from Mobile *Commercial Register,* July 13, 31, August 5, 1830; Huntsville *Democrat,* May 21, June 10, 17, 1830.

Hence, the necessity of frequent recurrence to first principles. Hence the necessity of popular elections; and hence too, the political axiom that where annual elections cease, tyranny begins."[33] The editor pointed to the possibility of the election in Alabama of a legislature similar to the one in Georgia that perpetrated the Yazoo fraud or the one in Alabama in 1818 which repealed the law limiting interest rates in the state. He asked whether the people would not want an opportunity to undo the work of such a legislature immediately, an impossibility under biennial elections and sessions.

The usually conservative Mobile *Commercial Register* said that "the effort to increase the power of our representatives by doubling the term of one branch of the legislature and adding one third to the other, is generally regarded as an attempt to abridge the people of a little more power,—to remove the accountability of public agents a little further from their masters, and to strengthen the hands of the aristocracy, by kindly relieving the people of the trouble of managing their own concerns. . . . This eternal meddling with established principles, this restless spirit of change and innovation on the part of some of our hustling politicians, must be put down, must be checked in the bud, or our constitution will shortly be of no more sanctity or value even than some of the contradictory enactments that adorn our statute books."[34] In another editorial, the same editor stated that the very excitement, agitation, and electioneering, of which the proponents of biennial elections complained, was a sign of interest in politics and good citizenship on the part of the people. He maintained that Alabama as a new state needed annual sessions to meet its constantly changing needs, until such time as its population and development should become more stable. He declared that "the legislature was literally a school for men, where statesmen were trained," and asked "whether the money expended in support of meetings of the legislature, is not amply paid back to us in benefits, apart entirely, from the enactment of laws."[35]

On the other hand, the Tuscaloosa *Intelligencer* declared in favor of biennial sessions in order to reduce expenses and local legislation. It said:

> The legislature, at its last meeting, continued in session seventy-four days. There were enacted thirty-four laws of a general character, sixty-three that are local and fifty-four that are private. Of the latter, eleven are acts for divorcement, nine for relief of tax collectors, four to legitimate and change the name of bastards, and fourteen for the emancipation of slaves. The number of slaves emancipated is forty-one; not one of whom was compelled to leave the state.[36]

---

[33] Huntsville *Democrat,* June 10, 1830.

[34] Mobile *Commercial Register,* July 13, 1830.

[35] *Ibid.,* June 24, 1830.

[36] Tuscaloosa *Intelligencer,* April 17, 1829.

The proponents of the proposed amendment advocated it as a reform in government; but it ran counter to the trend of increasing the participation of the people in their government and was defeated by a vote of 14,806 for and 16,283 against, a majority of 1,477 against.[37] An analysis of the geographic distribution of the vote shows about equal opposition to the proposed amendment in all sections of the state.

Defeated in 1830, the advocates of biennial sessions continued to agitate the question, and proposed an amendment at almost every session of the legislature during the eighteen-thirties. They were encouraged when the Mississippi constitutional convention of 1832 provided for biennial sessions. They gained the support of Governor Benjamin Fitzpatrick, who in 1844 urged the legislature to submit a biennial sessions amendment to the people. He said that annual sessions of the legislature were responsible for the "instability and short duration heretofore of many general laws enacted by the legislature."[38] As a result of the governor's message and growing public opinion for biennial sessions, the legislature voted to submit the proposal to the people in August, 1845.[39]

Many newspapers that had bitterly opposed biennial sessions in 1830 now joined the ranks of its advocates. For instance, the Huntsville *Democrat,* a bitter opponent of biennial sessions in 1830, in an editorial entitled "Legislative Abuses" said:

> The great evil is frequent or excessive legislation; and we think that the people will find that they will have effected a great and beneficial change in their constitution by the law of biennial sessions. Legislative periods being lengthened, representatives will have less inducement to exercise their electioneering principles upon the floors of the State House, and consequently will pay more attention to the enactment of wise laws, be not so forward in garrulous debating—briefly terminate their sessions from the absence of contentious excitement—And while this will result in infinite advantage in economy to the state, they will be affecting more public and less private good than have heretofore marked their course. . . . Too much government is worse than no government—the wisest laws are the fewest, and those which are the simplest.[40]

[37] *House Journal* (1830-1831), 99.

[38] Huntsville *Democrat,* December 11, 1844.

[39] *Acts of Alabama* (1844-1845), 208.

[40] Huntsville *Democrat,* August 13, 1845. The Montgomery *Advertiser* gave its support to the proposed amendment and declared: "Out of every two-hundred acts passed by our legislature there are not more than ten public acts. All the rest are made for the special use of some private individual or company. In this case the members of our legislature have to be paid fifty-six days for doing what might be done in ten. The balance of the time is devoted to enabling Tom to change his name, Dick to get rid of his wife and Harry to be relieved, perhaps, of paying his just debts. Perhaps the law enabling a woman to get rid of her husband requires to be enlarged so as to suit some particular case more conveniently! If so, the assembled wisdom of the state is always willing to effect these things at public

In August, 1845, the people voted by an overwhelming majority for the proposed biennial sessions amendment. The vote was 55,819 for to 5,167 against biennial sessions,[41] showing a great shift in public opinion since the proposal was defeated in a close vote in 1830. Every county in the state voted for the proposition except Tuscaloosa, which voted against it because it was submitted with another proposed amendment to strike out the provisions in the constitution forbidding the removal of the capital. In 1846 the legislature ratified the proposed amendment and it became a part of the constitution.[42]

From the beginning, one of the most bitter issues in Alabama politics was the location of the capital.[43] When the Alabama Territory was organized in 1817, the act of Congress stipulated that its seat of government should be temporarily established in the extreme southwestern section, on the Tombigbee River at St. Stephens in Washington County.[44] Soon thereafter the first territorial legislature appointed a commission, of which Governor William Wyatt Bibb was chairman, to select a permanent site for the capital. Bibb, without the aid of the other commissioners, chose a tract of land at the confluence of the Cahaba and Alabama Rivers,[45] a selection which proved popular in South Alabama, but was met in the northern part of the territory with much disfavor. In order, therefore, to placate citizens in the north, the legislature agreed to convene in Huntsville until the forest could be cleared away at Cahaba and suitable governmental buildings erected.[46]

Because high water flooded the town, Cahaba proved at once to be a poor choice. During the very legislative session in which a permanent site for the capital was under discussion, one of the highest floods on record inundated the area and legislators had to be rowed in boats to the second story of the building in order to hold their session.[47] The floods, plus fevers which frequented the place in summer months, prompted a special senatorial committee to recommend that the capital be moved.[48] The recommendation was adopted and immediately the fight for the capital began. Tuscaloosa, Selma, Greensboro, Montevallo, Autauga-

---

expense." Jacksonville *Republican,* February 12, 1845, quoting the Montgomery *Advertiser.*

[41] *House Journal* (1845-1846), 50.

[42] *Ibid.* (1845-1846), 203; *Senate Journal* (1845-1846), 171.

[43] For a previous printing of most of this material concerning removal of the capital see: Malcolm Cook McMillan, "The Selection of Montgomery as Alabama's Capital," *The Alabama Review,* I (April, 1948), 79-90.

[44] *U. S. Statutes at Large,* 14 Cong., 2 sess., III, 371-372.

[45] *Journal of the House of Representatives of the Alabama Territory . . . ,* 2 session, 14.

[46] *Acts Passed at the Second Session of the First General Assembly of the Alabama Territory,* 4; Brantley, *Three Capitals: A Book About the First Three Capitals of Alabama,* 38-39.

[47] Moore, *History of Alabama,* 121.

[48] *Senate Journal* (1825-1826), 27.

ville, and Centerville were contenders, and on the crucial vote in the House, Autaugaville lacked one vote of becoming the choice of that body.[49] However, in the end the legislators from the up-country, the Tennessee and upper Tombigbee and Warrior River valleys and the mountainous counties in the northern section of the state, joined forces to support the transfer of the capital to Tuscaloosa.[50] Since the Constitution of 1819 had provided that this decision was final, the capital could not be moved again without constitutional change.

In 1826, when Tuscaloosa became the capital, almost all of east-central Alabama was still Indian Territory.[51] Later, when this area was settled, its citizens demanded the removal of the capital from Tuscaloosa to a more central location. The sparsely settled Black Belt, a part of which was also in the Indian Territory, but with an annually increasing economy based on plantation slavery, threw its weight behind the demand Montgomery, centrally located in this area near the head of navigation on the Alabama River, and the focal point of political and journalistic leadership as well as the center of the state's "cotton kingdom," slowly became the combined choice of the two regions.[52] Indeed, to the Black Belt and all eastern and southern Alabama, except the lower Tombigbee Valley, any point on the Alabama River would have been more accessible than Tuscaloosa, just as any point on the Tombigbee River could have been more easily reached from northern and western Alabama.

The advocates of removal began agitation in the early eighteen thirties.[53] Within a few years they had won a majority vote in the legislature, but were short of the two-thirds necessary for submitting an amendment to the people. Since the question of a constitutional convention could be submitted to the people by a simple majority, the advocates decided to attempt to remove the capital by calling such a meeting But the Constitution of 1819 had made no provision for a convention and the Committee on the Judiciary of the House of Representatives 1838-1839, whose chairman was Marmaduke Williams of Tuscaloosa reported that the calling of a convention would be unconstitutional.[54] Advocates of the removal of the capital argued, however, that this provision had been omitted from the constitution merely because it was a fundamental and recognized right of the people of a democracy.[55]

---

[49] *House Journal* (1825-1826), 71; Nueremberger, "The 'Royal Party' in Earl Alabama Politics," *Alabama Review*, VI, 202.

[50] The removal of the capital was harmful economically to Cahaba. Lan had sold there at exorbitant prices while the town had served as Alabama's capita Following removal of the capital to Tuscaloosa, many persons whose property ha decreased in value because of the removal submitted petitions to the legislatur requesting compensations for their losses. For the sectional vote on removal t Tuscaloosa, see *Senate Journal* (1825-1826), 47, *House Journal* (1825-1826), 71.

[51] Tuscaloosa *Monitor*, January 21, 1846.

[52] Clanton W. Williams, "Early Ante-Bellum Montgomery: A Black-Belt Con stituency," *Journal of Southern History*, VII (November, 1941), 495-525. Se Weymouth T. Jordan, "Early Ante-Bellum Marion, Alabama: A Black-Be Town," *Alabama Historical Quarterly*, V (Spring issue, 1943), 12-31 for a di cussion of the growing importance of a typical Alabama Black Belt town.

[53] Tuscaloosa *Alabama State Intelligencer*, January 1, 1830.

The advocates of a convention, a majority in the legislative session of 1838-1839, submitted the question of a convention to the people in August, 1839.[56] In the campaign that followed, the most important issue of which was the question of removal of the capital (although some interest was evidenced in banking reforms),[57] the people defeated the convention by a vote of 20,127 to 6,427.[58] However, this was not a fair indication of sentiment on the matter of removing the capital. Because of the intense activity of the press throughout the state, there had developed a fear of an over-exercise of unlimited powers by a convention, and many voters had become apprehensive of it, fearing that it might become radical and possibly attack particular interests. One newspaper, for instance, declared that the "measure proposed is avowedly against and in hostility to the present constitution—a virtual abrogation of the whole instrument by an original act of popular sovereignty, which is in fact revolution."[59] Indeed, many of those who wanted the capital moved voted against the convention because of their fears of what such a body might do.

As the power and influence of the state's "cotton kingdom" increased, however, shifting the balance of political power in the state from North Alabama to the Black Belt, agitation for the removal of the capital from Tuscaloosa took on new impetus. In the legislative session of 1844-1845 the advocates of removal were able, by means of a stratagem, to submit to the people a proposed amendment which struck out the constitutional provision against removal.[60] The amending process was preferable to the convention method, they reasoned, if the two-thirds vote could be secured in the legislature. At least, it would not open the whole constitution to change, and therefore would not arouse popular fear. When an amendment proposing biennial sessions of the legislature came up for consideration in 1844, therefore, the advocates of removal of the capital attached a rider to it, proposing the elimination of the constitutional "removal" obstacle.[61] The rider was attached by a simple majority and from that moment the two issues were combined.

---

[54] *House Journal* (1838-1839), 178.

[55] Wetumpka *Argus*, June 19, 1839.

[56] *Acts of the General Assembly* (1838-1839), 210.

[57] Wetumpka *Argus and Commercial Advertiser*, June 26, July 3, 24, 31, 1839; Mobile *Commercial Register*, July 22, 1839.

[58] *House Journal* (1839-1840), 49.

[59] Mobile *Journal*, August 3, 1839.

[60] *Acts of the General Assembly* (1844-1845), 208.

[61] *Senate Journal* (1844-1845), 149. The amendment was attached as a rider by the Judiciary Committee in the Senate. A rider had formerly played a part in

The legislators from the Black Belt and eastern and southern sections of the state, except the lower Tombigbee Valley, voted to submit both proposals to the people. Representatives from North Alabama opposed the elimination of the "removal" restriction, but a number of them, influenced by the popular clamor for biennial sessions, joined the Black Belt and South Alabama in voting to submit both proposals at once.[62] The press of the state, divided according to sectional interests, assisted in making this the most bitter constitutional struggle in Alabama from the adoption of the Constitution of 1819 to the Civil War. Newspapers in the Black Belt and in South Alabama supported the proposals. Those of North Alabama, which included Tuscaloosa, were of course opposed. The Tuscaloosa *Monitor* complained that "we can scarcely take up a paper published in the southern part of the state, but that we find more or less upon the subject of removal of the seat of government."[63]

Those who wanted the constitutional provision against removal of the capital deleted argued that Tuscaloosa was far from the geographic or population center of the state. They added that the State House at Tuscaloosa was dilapidated, that a new structure was necessary even though the capital should remain there,[64] that, at the time of the adoption of the restriction on removal many portions of the state were not populated, and that many people now living in those sections had never been given an opportunity to express themselves on the subject. Montgomery, Selma, Wetumpka, and Mobile all hoped to get the capital and, of course, combined against Tuscaloosa in favor of the proposed constitutional modification. Later, after the restriction had been removed, they continued their fight in a mad scramble to secure the capital. Real estate promoters and business interests in each of these towns exerted every effort in favor of the proposed amendment. The Montgomery *Advertiser* editorialized as follows:

> There is not a man who owns a house and lot in this city, or within a mile of it, who is not directly and immediately interested. There is not a man who keeps a business establishment here, whether mechanical, professional, mercantile or otherwise, that is not interested in it. There is not a man who lives here and works that is not interested, and there is not a man that owns land within twenty or thirty miles of this city, with the exception perhaps of house and lot owners at Wetumpka, that will not be benefited by the location of the State House here. The man who owns land will have its value enhanced, and every man who sells lumber, corn, meal, vegetables, turkeys chickens, milk, butter, eggs, beef, mutton, pork, or articles of any kind con-

---

the location of the capital at Cahaba. In 1818, South Alabama placed a rider locating the capital at Cahaba on the Apportionment bill, which based apportionment on "white population" as North Alabama desired, but gave the capital to South Alabama.

[62] *Ibid.*, 168; *House Journal* (1844-1845), 325.

[63] Tuscaloosa *Monitor,* April 9, 1845. [64] *Ibid.*, July 9, September 17, 1845.

> sumed in cities will have the prospect of an enlarged market and increased consumption. Let us all therefore unite and work together to accomplish that in which we are all interested.[65]

Montgomery businessmen promised to build a new capitol at no cost to the taxpayers, if the seat of government were moved to their city. This announcement carried a double sting, for it was known fact that the Tuscaloosa capitol had been erected with money from lands given by the federal government.[66]

Those opposed to the proposed amendment argued that the removal of the capital would impose an additional burden upon taxpayers. In an editorial, "The State House Solid," the Tuscaloosa *Monitor* declared that "the question appeals directly to the pockets of the people. Surely they are already taxed enough to satisfy their patriotism without the certain prospect of still greater burthens. To remove the seat of government and provide another would cost more than $100,000. As well might so much treasure be cast in the river, as to expend it for this object, when there is not the least reason for it."[67] To prove that the capitol was in good condition, the mayor and aldermen of Tuscaloosa announced that it had been examined and officially reported sound.[68] Opponents of removal also charged that passage of the amendment would be like putting the capital on wheels, that it would be moved again and again, with the consequent loss and destruction of most of the state records. The Tuscaloosa *Monitor* asserted:

> At every session removal will be agitated and it will be out of the power of one legislature to bind its successors in regard to the location. One-fourth of the time of the legislature will be thus spent—hearing petitions from property holders who hope to get rich by getting the capital . . . and the spectacle will be presented of fifty wagons, at every adjournment of the legislature, moving off with the archives and state properties, to a place agreed upon by the majority, who united; perhaps on the log rolling principle, of each taking their turn at the seat of government.[69]

The same article charged that some of the voters in the eastern counties "flatter themselves that removal to Wetumpka or Montgomery would hasten the accomplishment of certain railroad projects in which they feel an interest."

A few days before, the *Monitor* had asked the people of Alabama to deal out justice to their fellow citizens by voting against the proposed amendment. Removal, the editor declared, would mean that the industry of the citizens of Tuscaloosa "for a series of years would be swept from them as effectually as though a tornado were to pass across this city."[70]

[65] Quoted in *ibid.*, November 19, 1845.

[66] Tuscaloosa *Monitor,* May 7, 1845, March 18, 1846.

[67] *Ibid.*, July 9, 1845.

[68] *Ibid.*, September 17, 1845.

[69] *Ibid.*, May 21, 1845.

[70] *Ibid.*, May 7, 1845.

Cahaba, the once proud capital of the state, joined the chorus of towns that sought the capital in 1845. The *Monitor* in a whimsical yet bitter editorial said of Cahaba's claim: "Ten miles on [beyond Selma] is a place of bats and owls, known twenty years ago as the seat of government. High water overflows it, and the old State House was actually washed down by inundation. That place, so deserted and lonely, has screwed itself up in the chorus for removal. . . . Cahaba wants it for the pleasure of running skiffs under the windows of the capitol to save members from drowning in their seats when the Alabama River spreads itself."[71] The *Monitor* admitted that Montgomery, in the heart of the Black Belt, was perhaps the fastest growing and most prosperous town in the state, but said that "wagons, drays, and auctions, the fruit of active commerce, like that of Montgomery, would detract the minds of members" of the legislature.[72] The same paper appealed to the people of the state not to move the capital and thereby leave the University of Alabama, which had been established there in 1831, alone "to dwindle and die."[73]

By a vote of 33,798 to 27,320 the people decided in August, 1845, to strike out the provision in the constitution against the removal of the seat of government. But in the same election the biennial sessions proposal was carried by a majority of 50,652. The advocates of removal forced the legislature to vote on the two issues as one; the people voted on them separately, however, and the results indicated clearly the great difference in popularity of the two issues. Twenty-one counties, all of which were in North Alabama, or the Tombigbee and Warrior River valleys, voted against striking out the restriction on removal. Twenty-nine counties in southern, central, and eastern Alabama voted in favor of the proposal. Tuscaloosa County, fearing any change in the constitution, was the only county to vote against biennial sessions of the legislature.[74]

Although a majority of the people had now voted to strike out the restriction on removal of the capital, under the Constitution of 1819 (Article VI, Section on mode of amending the Constitution) the proposed amendment could not be adopted until it had been ratified by a two-thirds vote of the next legislature. Should the members from the counties opposing the amendment vote as their counties had done, the proposed amendment would never secure the majority necessary for ratification. The advocates of removal, realizing this fact, organized a group of mass meetings and appealed to the people of the counties which had voted against the amendment, urging them in the name of democracy to instruct their legislators to vote for the proposal.[75] The Tuscaloosa *Monitor* answered this argument by pointing out that there was a difference between a numerical majority and a constitutional majority, and that the advocates of removal did not have the latter.[76]

---

[71] *Ibid.*, June 25, 1845.
[72] *Ibid.*, July 9, 1845.
[73] *Ibid.*, April 9, 1845.
[74] *House Journal* (1845-1846), 50.

When the legislature met in December, 1845, the most important question before it was the ratification of the proposed amendments. Voters opposed to removal now made every effort to force the legislature to consider the proposals separately, letting each stand on its own merits. They had a good argument: the people had given the biennial sessions amendment a majority of 50,652, while the proposal to strike out the restriction on removal of the capital had been adopted by a majority of only 6,478. Only one county had voted against the former and twenty-one against the latter. Unless the amendments were separated, the representatives from the twenty counties voting for biennial sessions and against striking out the "removal" restriction would be forced to violate the instructions of their constituents, regardless of which way they voted.[77] Several attempts were made to separate the proposed amendments, but each time the opponents of removal were outnumbered.[78] A representative from Greene County voiced the thinking of the smaller group by declaring that "we are placed in a painful position because the majority won't divide the questions."[79]

The first vote on ratification of the combined proposals, taken in the House on January 7, 1846, was 60 to 40, seven short of the required two-thirds majority for adoption.[80] Two days later the matter was reconsidered and the amendments carried by a vote of 68 to 32.[81] The vote in the Senate was 22 to 11, 22 being the necessary majority.[82] The proposal to strike the "removal" clause from the constitution was carried by a bare constitutional majority, and it is clear that the popularity of the biennial sessions proposal was responsible for the victory.

On January 28, 1846, less than three weeks after the ratification of the amendment, the legislature met in joint session to select a new site for the capital. Balloting began in the early morning and lasted all day. Sixteen ballots were cast before Montgomery secured a majority. Tuscaloosa, Wetumpka, Montgomery, Selma, Statesville, Mobile, and Marion all received votes in the contest, but the first-named three were the most serious contenders.[83] Tuscaloosa received 39 votes on the first ballot and held them until the last—all from North Alabama and the Tombigbee River Valley. Wetumpka secured 28 votes on the first ballot and in the subsequent voting once reached a total of 35, but eventually lost many of its votes to Montgomery, a neighboring Black Belt town, which had received only 33 votes on the first ballot, but which finally secured 68 votes and the selection on the sixteenth ballot.

---

[75] The largest such meeting was held in Selma. Tuscaloosa *Monitor,* September 3, 10, 1845.

[76] *Ibid.,* September 17, 1845.

[77] The Greensboro *Alabama Beacon,* December 13, 1845, which opposed the removal amendment, said: "The friends of removal have connected the two questions of removal and biennial sessions, for the purpose of forcing members to misrepresent their constitutents on the one question or the other. They were submitted to the people as separate and distinct propositions and were voted on as such. The vote for biennial sessions was nearly unanimous, whilst for removing the seat of government, the majority was less than four thousand [actually 6,478]. To ratify either of these two amendments a two-thirds vote is required; but this vote cannot be had on removal: hence its connection with the question of biennial sessions, in favor of which the vote would be nearly, if not quite, unanimous in both houses."

[78] Tuscaloosa *Monitor,* January 7, 1846; *House Journal* (1845-1846), 197.

[79] Tuscaloosa *Monitor,* March 4, 1846.

[80] *Ibid.,* January 7, 1846; House Journal (1845-1846), 197.

[81] *House Journal* (1845-1846), 203.

[82] *Senate Journal* (1845-1846), 171.

In a bitter editorial the Tuscaloosa *Monitor* denounced the use of the rider and other "sinister influences" which, it was claimed, had accomplished the removal. It said:

> The very inception of removal was unfair, because it was artfully connected with another proposition, by a bare majority of each house, and when so connected, in spite of the opposition of more than one-third, gained strength to pass by a vote of two-thirds. It was unfair to accomplish indirectly what could not be done in a direct and independent manner. . . . That measure which would fail of itself, it is unfair to strengthen by coupling with one of great popularity. It is unfair of the advocates of removal to have represented the State House in this city as in a dilapidated and unsafe condition, when such was not the fact. . . . On the one question there was a majority of 50,652 and on the other a majority of 6,478, leaving biennial sessions 44,175 ahead of removal. These were perfectly distinct propositions, and were voted upon separately as the great difference in the results shows. When returned to the legislature for ratification it was essentially unfair to bind them together. . . . The people of this county had a constitutional right to be represented and it was unfair in the removal majority in both branches to shape any question so as to prevent a direct vote upon it, by which the representatives of each county could reflect the will of their constitutents. . . . The representation in this state is by counties, and the members are bound to obey those who elect them. On no other principle can our political system be maintained. Twenty counties sending forty-two representatives, had expressed their opposition to removal at the ballot box;[84] and forty-nine counties, sending ninety-seven representatives had expressed their will for biennial sessions in the same way. It was the constitutional right of the people to be heard as they voted by counties. To refuse this right was unfair and a violation of the organic law. The removal men did this in the legislature, and we brand their course as greatly unfair, a much softer term than it merits. If the public interest demanded removal, the treasury should have paid the expense. The taxpayers of this state ask no boon. What building they need

---

[83] *Ibid.*, 217-228.

[84] Actually twenty-one counties had voted against striking out the provisions in the constitution against removal of the capital. *House Journal* (1845-1846), 50.

they are able and willing to pay for. It was unfair to have tempted some of their representatives by an offer to build a new State House, without public charge; when in fact their constituents had given them no authority to trade off the constitutional seat of government upon such terms. It was unfair toward Tuscaloosa, for Wetumpka, Montgomery, Selma and Mobile to procure the amendment by combination, then to set forth separate prospectuses and not stand by them to the last. To raise a loud hue and cry about centrality, stating that Tuscaloosa was within fifty miles of the state line, and then to select Montgomery only seven miles nearer the center, was alike unfair and childish.[85]

True to promise, Montgomery businessmen erected a capitol with privately-raised funds, and the public records were moved there in 1847. The fight over the capital had been a long and bitter one. It was not a fight between counties with a heavy slave population and "white counties" as such, for the counties along the Tennessee and Tombigbee all had heavy slave populations.[86] But it was a sectional fight between North and South Alabama, a fight which developed stronger feeling with the approach of the Civil War, and left political scars in Alabama politics which were not to heal for many years to come. Certainly the removal of the capital to Montgomery signified the emergence of the Black Belt as the dominant section in the economic and political affairs of Alabama.

[85] Tuscaloosa *Monitor*, March 18, 1846.

[86] *Ibid.*, January 23, 1846. The figures of the Negro population in the "removal" and "anti-removal" counties were estimated at 157,220 and 122,759, respectively.

CHAPTER V

POPULAR ELECTION OF JUDGES AND OTHER PROPOSED CONSTITUTIONAL CHANGES BEFORE 1861

Although the judiciary article was amended in 1830 so as to limit the tenure of judges to six years, agitation soon began for election of judges by the people.[1] The demand for popular election of judges increased as Jacksonian democracy, which advocated the election of all officials by the people, strengthened its hold on the state. Additional pressure arose after Georgia and Mississippi provided for popular election.[2] In Alabama, advocates of popular election first wanted county judges and later all judges elected by the people. The people defeated a proposed amendment for popular election of county judges in August, 1843.[3] In August, 1849, the question of the election of county and circuit judges by the people was submitted to popular vote.[4] The resolution of the legislature submitting the proposals provided for separate votes on the two issues.

Opponents of popular election of judges raised the question of the independence of the judiciary. They charged that the people were turbulent and unstable and would elect demagogues to the judgeships.[5]

A conservative article in the Huntsville *Democrat* said:

> It would bring judges, the mere creatures of the popular will, directly in contact with litigants. . . . Making the people the electors, he has, in every instance, his partisans or his opposers before him. To what extent his conduct would be influenced by such circumstances, may be easily conjectured. . . . It would expose the judiciary to all evil tendencies of party politics. At

---

[1] *Senate Journal* (1835-1836), 19; (1839-1840), 33; *House Journal* (1839-1840), 53.

[2] Georgia provided for popular election of inferior judges in 1810 and the Mississippi constitutional convention of 1832 gave the election of all judges to the people. Charles S. Sydnor, *The Development of Southern Sectionalism, 1819-1848*, *A History of the South*, V, 283, says that "Mississippi . . . became by its constitution of 1832 the most democratic state in the whole South." Because the Mississippi constitution was even more democratic than Alabama's earlier one, in that it provided for the election of all judges, the state treasurer, and auditor by the people, it often became an issue in Alabama politics.

[3] *Acts of Alabama* (1842-1843), 224; Wetumpka *Argus*, August 23, 1843.

[4] *Acts of Alabama* (1848-1849), 444.

[5] Huntsville *Democrat*, April 25, 1850. The Florence *Gazette*, July 21, 1849, declared that the people "are more likely to choose flippant and specious demagogues, than able, well-read and honest lawyers," and cited the state of Mississippi where all judges were elected by the people after 1832 as an outstanding example.

first, this influence would be secret; at last, open and powerful. Judges would be chosen with reference to their political relations; and opinions of constitutional law, adopted and enforced in conformity to hasty interpretations of reckless party leaders. There would, therefore, be ceaseless conflict of opinion, and the current of public justice would be corrupted in all its sources. At one time, the creatures of one of the great parties would succeed; then the constitutional interpretations of its leaders, would be enforced from the Benches. At another, those of the other great party would be invested with the ermine, and then, efficacy would be given to their wishes. . . . In the state,[6] which has the credit of the discovery of this new principle in civil science, it has already been associated with everything offensive in politics and morals. Boasting of the same paternity and rocked in the same cradle with repudiation, the same licentious press which celebrates the praises of one, proclaims the triumph of the other. Originating in a community, the resources of which had been exhausted, by the most wasteful extravagance and reckless speculation, it was the invention of lawless debtors, that the ends of retroactive justice might be defeated, and every degree of impunity secured to an indiscriminate denial and repudiation of all public and private engagements. . . . Since the formation of our state government, no question of the importance of this, has been submitted to the people. Much more is involved than appears to the careless observer. If it is just in principle, that the election of county and circuit court judges, should be referred to the people, is it not equally so, that the election of chancellors and supreme court judges should be confided to the same hands? If it is a great popular right, which has been withheld for centuries, and it is now about being asserted, why not extend the reform to the federal courts? To this complexion it will come at last! There are those, who are already advocating the policy of electing United States senators by the people. When all this shall be accomplished, the last tribute will have been paid to the majesty of the people; and the result will show, whether it was the work of the spoiler or the builder up—of the preserver, or the destroyer.[7]

The opponents of popular election of judges admitted that election by the legislature had resulted in log rolling and the election in many cases of inferior judges, but said election by the people would further weaken the judiciary. They appealed to the people to defeat the proposed amendment, and then force the legislature to submit another amendment providing for the appointment of judges by the governor with confirmation by the Senate.[8] They also suggested as an alternative a plan which restricted the legislature in its choice of judges to three men nominated by the governor or the supreme court.[9] They argued that the inadequate salary paid judges was a more important cause of inferior judges than election by the legislature. A judge had to relinquish private practice, and many of the best lawyers could not afford to sacrifice a lucrative private practice for the meager salary of a judge.[10]

---

[6] The reference is to Mississippi and the repudiation of the debt of that state in 1842.

[7] Huntsville *Democrat*, July 11, 1849.

[8] *Ibid.*, May 16, July 11, 1849.

[9] Florence *Gazette*, July 21, 1849.

The proponents of popular election of judges based their campaign on faith in the people and the defects of the existing system of electing judges. They declared that the "people are more honest than the politicians,"[11] and charged that much of the time of the legislature was spent in the election of judges when its main purpose was to enact law. The editor of the Huntsville *Democrat* said "we agree that the charge against the legislature is too well founded. The experience of the past demonstrates, that the members have legislated too much for themselves and too little for the people—have urged local and personal interest at the expense of the general welfare—have bartered away their votes in the election of judges and other public officials to incompetent men, to secure their influence in favor of turnpike roads, ferries, and other minor interests—and thus have frequently foisted upon the bench men of little character and less learning."[12] A contributed article in the Huntsville *Democrat* declared:

> In the first place it is well known to everybody, that judgeships are only obtained by electioneering with the legislature. The office of judge must be solicited or it cannot be had. We all know that when re-election takes place or vacancies are to be filled, the seat of government is crowded with persons who personally and through their friends solicit members of the legislature for their votes. He would be laughed at, who should say that he was a candidate for the office of judge, and yet refuse to attend the seat of government and solicit for it in person. . . . If experience proves anything it establishes the fact, that elections by legislative bodies are either the triumphs of one political party over another or the results of compromise and bargains. . . . The election of judges, then, by that body, bringing uniformly into play these sinister influences, becomes neither more nor less than a system of intrigue, bargain, barter and compromise, which are all summed up by one expressive American word, log rolling. . . . The election of judges by both houses of the legislature, never fails to prove a disturbing element in the whole legislation of a session. Salutary laws are often defeated by the opposition of members who become exasperated by the defeat of a favorite candidate; and support is sometimes won to the most impolitic legislation by bartering an incompetent judge for a mischievous law.[13]

The proponents of popular election of judges declared that Mississippi was an example of successful application of election of judges by the people. They pointed to the fact that in Mississippi Whig judges had been elected when the legislature and the executive were Democratic[14] and declared that a Whig judge could never have been elected by a Democratic legislature; therefore there was less politics in election of judges by the people than by the legislature.[15] The *Alabama Journal* favored the proposals and averred that "we believe that the masses of people are less liable to be reached and influenced by corrupt and improper motives, than bodies constituted and managed as are our legislatures—at all events, practice shows such to be the effect, and in those states where it prevails, the result has been always, it is stated, the selection of a good judiciary."[16]

---

[10] An article in the Huntsville *Democrat*, July 11, 1849, declared that often "a lawyer receives more from a single client than the amount of salary of a circuit judge" during a whole year.

[11] *Ibid.*, May 16, 1849.

[12] *Ibid.*, April 25, 1850. The Huntsville *Democrat* generally took the liberal side of any issue, whereas the Huntsville *Southern Advocate* was more often conservative.

[13] Huntsville *Democrat*, May 16, 1849.

In August, 1849, the proposed amendments for popular election of judges of the county court and circuit judges were ratified by majorities of 40,860 and 28,852 respectively.[17] The vote on the former was 52,230 to 11,370 and on the latter 46,163 to 17,311. The majorities indicate that opposition to election of judges was greater in the case of judges of the higher courts,[18] Marion was the only county in the state which voted against the proposals.[19] In 1850 the legislature ratified the proposed amendments,[20] and the first popular election of county and circuit judges was held in May, 1850.[21]

Another proposed amendment also submitted to the people in August, 1849, provided for a change in taking the census.[22] The Constitution of 1819 provided for a state census and reapportionment by the legislature in 1820, 1823, 1826, and each six years thereafter. This constant census taking and reapportionment was beneficial while Alabama was growing rapidly, but by 1849 the population of the state had become stable enough to permit a longer period between reapportionments. The proposed amendment provided for a state census in 1850, 1855, and every ten years thereafter with reapportionment after each census. It received a majority of 26,236 votes, the vote being 43,781 to 17,545.[23]

In the ante bellum period many amendments which never received the two-thirds vote of the legislature for submission to the people were proposed. One of the most constant proposals would make the sheriff eligible to re-election.[24] The Constitution of 1819 provided that the sheriff was to be elected by the people in each county "for the term of three years . . . and shall not be eligible to serve either as principal or deputy for the three succeeding years." Those who wanted to make the sheriff eligible to succeed himself argued that it would give stability to the enforcement of the laws by making it possible to keep an experienced man in the office. Those opposed charged that it would lead to the building up of a court house ring, with a sheriff more interested in retaining office than in enforcing the law.

---

[14] The Florence *Gazette,* July 21, 1849, declared that in 1846, a Democratic year, William L. Sharkey, a Whig, "was re-elected chief justice of the state although he had opposed repudiation and declared a favorite law of the Democratic Party unconstitutional." See Rowland, *History of Mississippi,* I, 709-710.

[15] Florence *Gazette,* July 21, 1849.

[16] Montgomery *Alabama Journal,* July 30, 1849.

[17] *Senate Journal* (1849-1850), 94.

[18] The justices of the peace had been elected by the people since 1819.

[19] Huntsville *Southern Advocate,* October 5, 1849.

[20] *House Journal* (1849-1850), 412; *Senate Journal* (1849-1850), 157.

[21] Florence *Gazette,* May 11, 1850.

[22] *Acts of Alabama* (1848-1849), 443.

[23] *Senate Journal* (1849-1850), 94.

Many proposals sought to reduce or remove the constitutional provision stipulating that no county could be created of less than nine hundred square miles.[25] As a result of this limitation, Alabama organized fewer counties than many states with a smaller land area.[26] Because of local interests there was much agitation for division in various counties and petitions were sent to the legislature. Dissension and the consequent desire for division arose over such questions as the location of the county seat, stock laws, the building of roads or bridges, the voting of local taxes, and the difficulties of transportation. Scores of bills were introduced to divide counties but many times this was impossible because of the nine hundred square mile limit. Two of the proposed amendments in the period would reduce this limit to 575 square miles and 756 square miles.[27]

There was a growing distrust of the legislature in Alabama and bitter criticism of the dominant position in the government given the legislature by the Constitution of 1819 was expressed. As already indicated, this distrust was manifest in the amendments for biennial sessions and the election of county and circuit judges by the people. In addition, proposals to limit the sessions of the legislature to a number of weeks were numerous. The limits usually suggested were from four to ten weeks.[28]

---

[24] Huntsville *Republican,* August 27, September 17, December 17, 1824; Cahaba *Press,* December 6, 1823, January 7, 1826; *Senate Journal* (1825-1826), 103; *House Journal* (1829-1830), 161.

[25] *House Journal* (1828-1829), 244, 254; *ibid.* (1853-1854), 237, 432; *ibid.* (1829-1830), 157; *Senate Journal* (1847-1848), 62; *ibid.* (1848-1849), 267; *ibid.* (1851-1852), 204; *ibid.* (1859-1860), 42, 208. Some counties created before 1819 were less than nine hundred square miles, but all those created thereafter met the requirement.

[26] Alabama with a land area of 51,078 square miles today has 67 counties; Georgia with 58,518 square miles has 159; Kentucky with 40,109 square miles has 120; Tennessee with 41,961 square miles has 95; North Carolina with 49,142 square miles has 100; Virginia with 39,899 square miles has 100; and Louisiana with 45,177 square miles has 64 parishes. In none of the original southern states were there constitutional limits on the size of counties. Among the new southern states, Tennessee and Mississippi had such limitations; Tennessee limited its counties to not less than 625 square miles and Mississippi to not less than 576.

[27] *House Journal* (1828-1829), 244, 254; *Senate Journal* (1859-1860), 136.

[28] *Senate Journal* (1830-1831), 36, 45; *House Journal* (1828-1829), 189; *ibid.* (1829-1830), 170; *ibid.* (1849-1850), 51; *ibid.* (1851-1852), 467.

It was argued that such limitation would save the people money, prevent many local and private bills, reduce log rolling, and force the legislature to give attention to major legislation. The opponents of these proposals said that it would not even save the people money since the governor would be forced to call many special sessions. To meet this objection, a constitutional amendment limiting the governor to the call of one special session of the legislature every five years was suggested.[29] There were proposals to limit the pay of legislators to $3.00 a day and to make members of the legislature ineligible to any office within the power of the legislature.[30] There were efforts to limit by law and by constitutional amendment the legislature's power to pass local and special legislation.[31] Other proposals would take from the legislature all appointive power and give the election of officials to the people. Amendments were proposed in the eighteen forties and eighteen fifties to make the secretary of state, state treasurer, comptroller of public accounts, chancellors, judges of the supreme court, attorneys general, and solicitors elective by the people.[32] The advocates of these amendments placed their faith in the people rather than in the legislature. Some of these proposals were passed by one house of the legislature but they never received legislative sanction and the agitation for them ceased during the Civil War.

Another proposal would increase the jurisdiction of the justice of the peace. The Constitution of 1819 limited his jurisdiction in civil cases "to causes in which the amount in controversy shall not exceed fifty dollars." Amendments to strike out $50 and substitute $100 were often proposed in the legislature. In 1843, the legislature submitted such an amendment and the people defeated it in August, 1843.[33] Others wanted the justice of the peace to have jurisdiction over "cases of assault and battery and affrays under such regulations as the legislature may prescribe."[34] Both proposals in regard to justices of the peace were efforts to relieve the county court of minor cases and speed up trials. A committee of the House of Representatives reported adversely on the latter amendment because offenders tried by justices of the peace would neither be indicted by a grand jury nor tried by a petit jury.[35] There were attempts to strike from the Constitution of 1819 the provision that each circuit should "contain not less than three nor more than six counties."[36] Its proponents advocated making the judicial circuits larger and relieving the circuit judges of supreme court duty by creating separate supreme court judges. An amendment providing for the holding of one session of the supreme court each year in North Alabama was demanded by that section after the capital was moved from Tuscaloosa.[37] Proposals were advanced to change the constitution so that a divorce might be granted by the courts without the two-thirds vote of the legislature.[38] The Constitution of 1819 provided that divorces granted by the courts should receive a two-thirds vote of the legislature. The legislature spent much of its time reviewing divorce cases. Even in the constitutional convention of 1819 there had been an attempt to give the matter of divorces to the courts.[39] There were proposed amendments to substitute *viva voce* for voting by ballot,[40] and to change the sixth article of the constitution on banking.[41] Some of the latter would strike out all constitutional regulations on banking; others sought to increase these regulations.

---

[29] *House Journal* (1829-1830), 170.

[30] *Senate Journal* (1851-1852), 204; *House Journal* (1851-1852), 182.

[31] *Senate Journal* (1844-1845), 15; *ibid.* (1849-1850), *House Journal* (1847-1848), 281; *ibid.* (1849-1850), 444; Montgomery *Advertiser,* May 22, 1852.

[32] *Senate Journal* (1847-1848), 117, 306; *ibid.* (1853-1854), 101, 109, 330; *House Journal* (1847-1848), 117, 132, 282, 284, 286, 288, 294, 320; *ibid.* (1849-1850), 98, 442; *ibid.* (1853-1854), 164, 447, 542, 549.

[33] *Acts of Alabama* (1842-1843), 224; Wetumpka *Argus,* August 23, 1843. For agitation of the question before and after 1843 see *House Journal* (1830-1831), 43; *ibid.* (1831-1832), 39; *ibid.* (1839-1840), 35; *Senate Journal* (1849-1850), 53, 92, 155; Huntsville *Republican,* December 9, 1830; Mobile *Argus,* December 16, 1822.

[34] *Senate Journal* (1849-1850), 67, 214; *House Journal* (1847-1848), 48, 338, 354; *ibid.* (1849-1850), 90, 91.

[35] *Ibid.*

The lack of agitation for amendment of certain sections of Alabama's constitution in the ante bellum period is as significant as agitation for amendment of others. The Alabama Constitution of 1819 was so democratic in many respects that even though democracy made much progress as the years passed, it did not need amending. County governments had been made democratic and the election of the governor given to the people. Universal white manhood suffrage had been provided for and hence there was no struggle for extension of the suffrage.[42] Agitation in the early part of the period for reduction of the residence requirements for voting and holding office[43] disappeared as the population of the state became more stable. The absence of a bitter fight over legislative reapportionment, so common in many southern states, was also significant.[44] The Constitution of 1819 provided for periodic reapportionment on the "white basis" and these provisions were carried out by the legislature.[45]

---

[36] *Senate Journal* (1851-1852), 274; *House Journal* (1830-1831), 39, 167.

[37] *Senate Journal* (1851-1852), 204; Huntsville *Democrat,* March 14, 1849.

[38] *Senate Journal* (1847-1848), 156, 168; *House Journal* (1844-1845), 80.

[39] Harry Toulmin, supported by Clement C. Clay and John M. Taylor and opposed by William R. King, Israel Pickens, and John W. Walker, attempted to change the original draft so as to dispense with the two-thirds vote of the legislature, but the proposed amendment was defeated. Mobile *Gazette,* August 25, 1819.

[40] *House Journal* (1839-1840), 55.

[41] *Senate Journal* (1838-1839), 7; *ibid.* (1839-1840), 11; *ibid.* (1851-1852), 21; *House Journal* (1839-1840), 19; *ibid.* (1845-1846), 46, 47; *ibid.* (1847-1848), 19.

[42] For the suffrage controversy in the South Atlantic States during this period, see Fletcher M. Green, *Constitutional Development in the South Atlantic States, 1776-1860,* 167, 190-195.

[43] Cahaba *Press,* December 7, 1822, December 6, 1823, December 11, 1824.

[44] Green, *op. cit.,* 168, 195. Sydnor, *op. cit.,* 283, asserts "Alabama, the most democratic of the Southern States in 1819, found little to change in its form of government [before 1848] except to reduce the terms of judges from life to six years. . . . [By 1850 there were] five states in which government was thoroughly

Nevertheless, by 1852, there was a wide belief that major changes were needed in the constitution which could not be accomplished by amendment. An article in the Huntsville *Southern Advocate* declared that the demand for constitutional reform was not surprising since "it is now 33 years since the constitution of Alabama was adopted."[46] It stated that all recognized the necessity for a convention except "office holders, the terms and tenure of whose offices may be changed by a new constitution; timid persons who fear all change; and the ultra conservative class, who openly declare that they have no confidence in the people."[47] The editor of the Montgomery *Advertiser* advocated a convention because constitutional reform is needed every generation. He declared:

> Among the most prominent defects of the present constitution, we may mention: the want of limitations on the time the legislature may sit; biennial sessions; the too great area—900 square miles—required for each county; illimitation of the legislature to borrow money, and lend the credit of the state; permitting two persons to call yeas and nays, eligibility of members of the legislature to hold or be elected to office by their own body; inadequate restrictions upon Banks, and want of restraint upon local legislation. . . .
>
> We think it is apparent to all, that the length of the sessions of the legislature is growing into an evil that requires speedy remedy. The last three sessions have been prolonged for three months or more, and have been productive of a vast bundle of trash in the shape of petty local legislation upon subjects, that could most properly be left to the various administrative and executive departments of the state government, such as the commissioners of roads and revenues, to the judges of the superior and inferior courts, and the executive. By a review of the acts of the last few sessions of the legislature it will be seen that they have assumed in great measure the administrative and executive as well as the legislative department of the state government. They pass general laws and then legislate an exception for almost every county, town, and village in the state. This has come to be a kind of fashion —a tribute that every legislator, almost, seems to think that he must pay to buncombe in order to retain his position at home. All this too, not only occupies a prominent position among the proceedings of both branches of

---

democratic. . . . In each of these states—Alabama, Mississippi, Tennessee, Arkansas, and Texas—the governor was popularly elected. There was universal manhood suffrage, legislative apportionment in both houses was based on white population, with provision for periodic reapportionments, and county government was democratic."

[45] The "white basis" vs. the "federal ratio" or "Negro basis" became a bitter issue between the Democrats and Whigs respectively in gerrymandering congressional districts in the 1840's, but that was not a state constitutional problem. See Moore, *History of Alabama,* 177; Theodore H. Jack, *Sectionalism and Party Politics in Alabama, 1819-1842,* 82-83.

[46] Huntsville *Southern Advocate,* June 30, 1852.

[47] *Ibid.*

the general assembly, but everyone who is at all familiar with their doings, will bear us out in the statement, that these trivial matters are all attended to first, and the more important and truly legitimate objects of legislation are crowded into the few last days of the session, however lengthy it may have been, and are generally passed in haste and with little consideration and investigation. Some constitutional provision should be devised to put a stop to it, and nothing will be more effective than to limit the time they shall sit, after which their *per diem* shall cease; this will be equal to an ordinance of prorogation, for we imagine few, at least not a quorum, will be found so patriotic as to serve the public on their own expenses.

Biennial sessions, we think, have proved pretty much a humbug. We voted for it, but it is quite evident that it has not produced the fruits expected. It has been more expensive, if anything, than the annual session; and invades that great and cherished principle in our republican system, of a frequent recurrence to the constitutent; once a year is the proper limit, we think, for the purpose. Let the sessions be short but annual. Four or five weeks per annum, would be ample for all ordinary purposes.

The present is a most fit opportunity to put a limit upon the authority of the legislature to borrow money or loan the credit of the state for any purpose whatever, beyond a certain sum—say one or two hundred thousand dollars—except upon extraordinary emergencies, which could be provided for in the ordinances. The people of this state have now a debt of some five or six millions of dollars—besides what they have already paid—to pay by taxation, for which enormous amount the state has not been benefited one dollar—it has all, all been sunk; borrowed during a time of high excitement and extravagant speculation, and squandered upon unworthy objects, through a rotten banking system, to be re-imbursed out of the hard, honest labor of the people.[48]

An article in the Huntsville *Southern Advocate,* discussed "the most important of the changes which are proposed to be made in the constitution, as indicated by public opinion in various parts of the state."[49] It listed them as follows:

1. Election of judges of the supreme court, chancellors, and solicitors by the people.
2. The branching of the supreme court, so as to require one term of the court to be annually held in North Alabama.
3. The abolition of chancery courts and the transfer of their jurisdiction to the circuit courts.
4. Removing or modifying the restrictions upon the legislature on the subject of banking.
5. Limiting the period of legislative session and providing anew for annual elections to the legislature.
6. Reducing the size of counties below the present fixed limit of 900 square miles.
7. Restrictions upon the legislature in borrowing money, and in lending the aid of the state to works of internal improvement.

---

[48] Montgomery *Advertiser,* May 22, 1852.

[49] *Southern Advocate,* June 30, 1852.

8. Making provisions for holding the chancery, circuit and probate courts in the event of the sickness and protracted disability of the judges of these courts.
9. Prohibiting the election of members of the legislature to any office within the gift of the legislature.[50]

The legislature in 1852 submitted the question of a convention to the people, but opponents of a convention aroused the fears of the people. They declared that a convention would be all powerful; it might be radical and attack the very foundations of society; that the new constitution would not be submitted to a vote of the people. And, despite the support of many important newspapers,[51] the call for a convention was defeated by an overwhelming vote. Every county in the state voted against it.[52] The Huntsville *Southern Advocate* declared the vote did not mean "that the people are pleased with the present constitution; but simply that they prefer it with its acknowledged defects to incurring the expense and dangers of a convention with plenary powers. There was a general apprehension in the public mind that the convention, if called, would be composed of no better material than goes to make up the legislature. We believe that the members of the convention would be selected from the ablest, wisest, and most discreet men in the state, and therefore favored the convention. But the opposite opinion had permeated the masses, and defeated the call of the convention."[53]

The movement for a convention did not die, however. The proponents of a convention used all the old arguments and placed more emphasis on the need for the popular election of all executive and judicial officials.[54] More pressing was the matter of legislative elections. The biennial sessions amendment, added to the constitution in 1846, did not change the provision of the constitution which provided for the annual election by the legislature of the state treasurer and comptroller of public accounts.[55] A legislature meeting biennially obviously could not elect officials annually.[56] Since 1846, these officials had been holding over for another year and in some cases the governor sought to make the "hold over" legal by using his interim power to appoint the incumbent for another year.[57] But in 1854, in Collier v. Frierson the Alabama Supreme Court ruled that the company which had given bond for the treasurer was not liable for some $20,000 which the treasurer defaulted on during his interim appointment.[58] The proponents of a convention now argued that if for no other reason a convention should be called to provide for the biennial election of state treasurer and the comptroller.[59] They charged that the old constitution was a "patchwork constitution" and demanded a convention to make general revision.[60] The Montgomery *Advertiser* declared that the next case before the courts would involve the question of whether Alabama had any legally elected officials, since the Constitution of 1819 provided for two-day elections and for years it had been the practice to keep the polls open for one day only[61] The legislature in 1856 again submitted the question of holding a convention. The resolutions of submission declared "that owing to the defects in the constitution of the State and the numerous amendments now proposed to the same, it is expedient to call a general convention." In an attempt to allay the fears of the opponents of a convention, the resolution provided that any constitution had to be "submitted for ratification."[62] But in May, 1856, popular apprehension of the powers of a convention again defeated the movement; the people voted 31,066 to 21,919 against the proposal.[63]

---

[50] *Ibid.*

[51] Among the important papers supporting a convention were the Huntsville *Southern Advocate,* Montgomery *Advertiser,* and *Alabama Journal.*

[52] Montgomery *Alabama Journal,* August 14, 1852.

[53] Huntsville *Southern Advocate,* August 18, 1852.

[54] Montgomery *Advertiser and State Gazette,* April 23, 1856. The joint resolutions of the legislature submitting the question to the people are printed in the Montgomery *Weekly Alabama Journal,* March 29, 1856. These resolutions provided that if the people voted for a convention to write a new constitution, any constitution written should be submitted to the people for ratification. See also Montgomery *Advertiser and State Gazette,* March 15, 19, April 2, 1856.

[55] The original joint resolutions passed by the legislature submitting the amendments to the people did change this part of the constitution to conform with biennial sessions. But the legislature made an error in its ratification after submission to the people and failed to ratify the fifth resolution containing this change. Montgomery *Weekly Alabama Journal,* March 29, 1856.

[56] Because the constitution was contradictory, the legislature in 1858 provided

Having failed to secure a convention, the legislature of 1857-1858 passed resolutions submitting two amendments to the people to be voted

---

by law for annual sessions of the legislature, but Governor A. B. Moore vetoed the measure as unconstitutional. Prattville *Autauga Citizen,* February 4, 1858.

[57] Montgomery *Weekly Alabama Journal,* May 3, 1856.

[58] J. W. Shepherd, *Reports of Cases Argued and Determined in the Supreme Court of Alabama,* XXIV, 100-111. The Montgomery *Weekly Alabama Journal,* December 2, 1854, contained an extended discussion of the situation and declared that as a result of the defect in the constitution and the court decision, Alabama had "no legal comptroller or state treasurer." The new treasurer, William Graham, in making his report to the legislature said: "By the decision of the Supreme Court, since the last report, releasing the sureties of S. G. Frierson, the late treasurer, it is presumed that the balance of $14,556.07 remaining due from him as per books of this office, besides other items not here entered will prove a total loss to the state." Prattville *Autauga Citizen,* October 26, 1854. See also Montgomery *Advertiser and State Gazette,* March 19, April 2, 1856.

[59] Montgomery *Weekly Alabama Journal,* May 3, 1856; Montgomery *Advertiser,* April 2, 23, 1856.

[60] The Montgomery *Advertiser,* March 15, 1856, said: "The whole instrument needs overhauling and it will be far cheaper to effect the requisite reforms by convention than to trust the matter to the prejudices and contentious debate of biennial legislation."

[61] Montgomery *Advertiser,* April 2, 1856.

[62] Montgomery *Advertiser and State Gazette,* April 23, 1856; Montgomery *Weekly Alabama Journal,* March 29, 1856; Prattville *Autauga Citizen,* April 3, 1856.

[63] Montgomery *Weekly Alabama Journal,* June 28, 1856.

on in August, 1859.[64] One provided for biennial election by the legislature of the comptroller of public accounts and state treasurer, and the other for biennial elections but annual sessions of the legislature. However, because of the increasing sectional controversy, these proposals received little attention in the newspapers or the public forum. Amid intense excitement, Alabama was at this time re-appraising the value of the Union, which public opinion thought far more important than constitutional reform. In one of a few editorials on the proposed amendments, the Montgomery *Advertiser* declared:

> A certain amount of legislation has to be accomplished, a certain quantity of labor has to be done, to meet the exigencies of the State through a period of two years, and it makes no difference in point of cost whether this be done by one session of a hundred days or two sessions of fifty days each. . . . There are many reasons to be urged in favor of the proposed change. In the present stormy and threatening aspect of federal politics, the State of Alabama can adopt no better safeguard than to require her legislature to convene every year . . . that our house may be kept in order and preparation made to meet whatever events are in the womb of the future. We should also by this system avoid the necessity which now exists of electing United States senators at least two years before their term of office.[65]

Because of the sectional crisis and the ever present voter tendency, now intensified, to ignore proposed amendments in a gubernatorial election, the amending process completely broke down in August, 1859. In many counties of the state no vote was taken on the proposals.[66] The records indicate that neither the secretary of state whose duty it was to tabulate and send the vote to the legislature, nor the legislature took any action.[67] In December, 1859, the legislature voted down a resolution calling a convention to amend the constitution "and further to take such steps as they may deem proper and necessary to settle the terms upon which Alabama will continue a member of the federal union."[68]

Finally, it may be said that there was a growing demand for constitutional reform in Alabama, which the coming of the Civil War checked. Without the war, Alabama probably would have soon held a convention to make major changes in the constitution. The war came and the state held a secession convention instead, which had plenary powers, but in which constitutional change was naturally of secondary importance.

---

[64] *Acts of Alabama* (1857-1858), 425-427; Montgomery *Daily Mail,* March 2, 1859. The Prattville *Autauga Citizen,* March 10, 1859, printed the joint resolutions in full.

[65] Montgomery *Advertiser,* June 15, 1859.

[66] The original manuscript returns are in the archives at Montgomery, Alabama. The secretary of state lists counties in which no vote was taken on the amendments.

[67] A search of newspapers and the *Journals* of the legislature revealed no further action.

[68] *Senate Journal* (1859-1860), 157; Prattville *Autauga Citizen,* December 1, 1859.

CHAPTER VI

THE SECESSION CONVENTION OF 1861[1]

The Alabama legislature in February, 1860, instructed the governor to call a convention of the people of Alabama in case of the election of "a president advocating the principles and action of the party in the Northern states calling itself the Republican Party."[2] After the election of Abraham Lincoln, Governor Andrew Barry Moore issued a proclamation on December 6, for the election on December 24 of delegates to a convention, allowing about three weeks for the campaign.[3] Each county was to have as many delegates as it had members of the House of Representatives. The question of calling a convention was not submitted to the people as it had been in 1852 and 1856.

As the campaign for the convention progressed amid great excitement, it became evident that a large majority of the people of Alabama were inclined to secession, but the secessionists were divided among themselves. The "immediate secessionists" advocated prompt and separate state secession; the "cooperationists" favored a southern convention to consider secession and a redress of grievances.[4] Candidates of both factions opposed each other in nearly every county.[5] The secessionists elected fifty-four and the cooperationists forty-six of the one hundred delegates.[6] Most of the cooperationists were elected from North Alabama and the secessionists from Central and South Alabama.[7] The secessionists candidates won in twenty-nine counties for an approximate vote of 36,000, the cooperationists in twenty-two counties for a vote of 28,000. The vote showed a distinct sectionalism between North and South Alabama.[8]

---

[1] The author has not attempted in this chapter to discuss the background, theory, or politics of secession in Alabama. Secession was the primary work of the convention, but as a constitutional question, it involved the federal rather than the state constitution. Those who believed that secession was legal argued that a constituent assembly had ratified the ordinance making Alabama a part of the Union and a like assembly could legally withdraw Alabama from the Union by repealing that ordinance. Emphasis in this chapter is placed on the part the convention played in the interim period (when Alabama was no longer in the Union, yet not a member of the Confederate States of America); the role of the convention in establishing the Confederacy; and constitutional changes made by the convention. The secession movement in Alabama has already been well worked. The best monograph on the subject is that of Clarence Phillips Denman, *The Secession Movement in Alabama.* See also Lewy Dorman, *Party Politics in Alabama from 1850 through 1860;* John W. Dubose, *Life and Times of William L. Yancey;* Walter L. Fleming, *Civil War and Reconstruction in Alabama.* Good printed primary sources are Joseph Hodgson, *The Cradle of the Confederacy,* and William Russell Smith, *History and Debates of the Convention,* an account kept by an anti-secessionist member of the convention and published in 1861.

[2] *Acts of Alabama* (1859-1860), 686. There were but two dissenting votes against the resolution. But, later Governor A. B. Moore resisted considerable pressure from North Alabama to call the legislature into special session to rescind the resolution and refer any crisis to a vote of the people. Denman, *The Secession Movement in Alabama,* 90.

[3] Smith, *History and Debates of the Convention,* 90.

[4] Denman, *op. cit.,* 87-122. Dorman, *op. cit.,* 167, says: "There were various shades of opinion among the cooperationists, varying from unconditional unionism

During the campaign the press of the state engaged in a discussion of the powers and objectives of the convention. The newspapers of North Alabama were in general cooperationist and those of South Alabama secessionist, in each case reflecting the majority attitude of the people of their section.[9] Everywhere it was admitted that the most important question would be that of secession. But if secession were decided upon, that would be only the beginning of the work of the convention. If Alabama were to become a sovereign and independent state or a member of a new union, this convention must revise Alabama's constitution to meet the new situation and make any vital decisions of an organic nature. The Mobile *Register* said:

> A convention of the people of this commonwealth assembles at the capital on the seventh day of next month. It is the opinion of many persons that all this convention has to do, or can do, is to take the state out of the Union, and then adjourn. Let us for a moment consider in what condition we should find ourselves, were this view of its duties and powers generally adopted by the convention and acted upon.
>
> We should be practically without a constitution of Government, or what is the same thing, under a constitution which is wholly inapplicable to the condition of the state, because deficient in the most essential requirements of an independent self sufficient government. . . . This state constitution was

---

to an advocacy of secession with the promise from other Southern States that they would give Alabama their support in case Alabama should secede." Within the ranks of the cooperationists were "ultimate secessionists," who wanted to make one last demand on the North for Southern rights within the Union and await an "overt act" against the South by the Lincoln administration.

[5] In eight counties, chiefly in southeast Alabama, the secession candidates had no opposition. Dorman, *op. cit.*, 168.

[6] Denman, *op. cit.*, 122.

[7] There were some exceptions. Conecuh County elected a cooperationist; Calhoun elected three immediate secessionists; and Tallapoosa and Coosa elected six cooperationists. The last two counties formed a salient extending well into the immediate secession region of Alabama. *Ibid.*, 116-117.

[8] Sectionalism and the prevalence of small farmers without slaves were factors in the election in North Alabama. However, Denman, *op. cit.*, 117-118, concludes that close economic ties between North Alabama and Tennessee was the most important reason for that section's opposition to secession. North Alabama might have to market her goods in a foreign land as there was no likelihood of Tennessee's immediate secession.

[9] There were exceptions. The Mobile *Advertiser* and Selma *Alabama State Sentinel* were cooperationists.

> framed to fit Alabama as a member of the Union 'consistent with the Constitution and the laws of the United States' as the preamble states. As a member of the Union, Alabama exercises some of the most dignified and most important attributes of sovereignty conjointly with the other states comprising that Union, in the manner provided by the common Constitution to which she agreed. It is under that constitution that she, conjointly with other states, regulates her commerce with foreign nations; it is in that manner that she coins her money, regulates its value, etc.; it is in that manner that she provides for an efficient post-office establishment within her limits; it is in that manner that she declares war and makes peace. . . . If the grant made to the federal government is to be recalled, and that to the state government enlarged, it must be by the people of the commonwealth in their sovereign capacity. The convention, therefore, representing that sovereignty, which assembles on the 7th of next month, if it dissolves the ties that bind Alabama to the other states of the confederacy and thereby recalls the grant made to the general government, must by the same act establish a constitution which—however much it may retain of the contents of the old one—is in theory and in fact a new constitution.[10]

The Mobile *Register* listed the following as among the most important tasks of the convention in case the state seceded:

> Providing for the continuance and validity of all rights, action claims, contracts, processes, etc., under the old Government—also the continuance in office and compensation of all officers, magisterial and judicial, etc.; the remaining in force of all laws and parts of laws of the state until expiring by limitation or repealed under the authority of the new constitution—also, providing for elections under the new constitution.
>
> Repealing those portions of the constitution which contemplate Alabama as a member of the Union, and adding such as are needed for the exercise of the delegated sovereignty which she resumes.
>
> Declaring the United States coin current at the accustomed rate until the coinage and currency shall be regulated under the authority of the new constitution, and making paper of a certain description legal tender under the same condition.
>
> Appointing commissioners to confer with other states, requesting our senators and representatives to vacate their seats in Congress, and act as commissioners to the United States.
>
> Giving the Governor provisional power to accept in behalf of the State the U. S. mail contracts in the State—establishing a provisional Postal Board, and providing for a tax on all letters mailed and delivered within the State.[11]

When the convention met on January 7, 1861, the secessionists had a majority in the convention and consequently were able to organize it. They elected William McLin Brooks, a leading secessionist of Perry County, and an ardent supporter of Breckinridge and Lane in 1860, president of the convention. However, William L. Yancey was the tower of strength for the secessionists in the convention. Since he wrote the Alabama Platform in 1848 and launched the Southern Rights Party, he had waited for this day. On the eve of the convention he declared:

---

[10] Quoted in Huntsville *Southern Advocate,* December 12, 1860.

[11] Quoted in *ibid.*

> No proffered compromises, no amendments to the Constitution, no proffered additional guarantees, can delay her [Alabama's] action for independence a moment. There is no defect in our fundamental law; therefore it needs no alteration. The great defect in the Union is the public conscience and education of the Northern masses upon the slavery question, which begets an irreconciliable and irrepressible conflict between them and that institution, and of course between them and all constitutional provisions which protect that institution.[12]

In addition to Yancey, John T. Morgan and Thomas H. Watts led the secessionists; Jeremiah Clemens, Nicholas Davis, and Robert Jemison were the leading spokesmen for the cooperationists.

A Committee of Thirteen, a majority of which was secessionist, was appointed "to consider and report what action should be taken by this convention in order to protect and preserve the rights and liberties of the people of the state of Alabama."[13] On January 10, William Lowndes Yancey, chairman of this committee, reported for the majority "An Ordinance to dissolve the Union between Alabama and the other States united under the Compact styled 'The Constitution of the United States of America.'" The preamble[14] of the ordinance stated that the election of Lincoln by a sectional party, hostile to the domestic institutions and to the peace and security of Alabama, preceded by many violations of the Constitution of the United States by the states and people of the northern states, was a political wrong of so insulting and menacing a character as to justify secession. The Ordinance declared that "The State of Alabama now withdraws, and is hereby withdrawn from the Union known as 'the United States of America,' and henceforth ceases to be one of the said United States, and is, and of a right ought to be, a Sovereign and Independent State."[15] It invited the other southern states to meet Alabama in convention in Montgomery on February 4 to take concerted action for their common peace and security.

Jeremiah Clemens, of North Alabama, made the minority report[16] for the cooperationists, calling for a southern convention before seceding, and containing resolutions giving the basis upon which Alabama would remain in the union and on which Alabama delegates to such a convention were to seek a settlement. Among the points enumerated were the execution of the Fugitive Slave Law, the repeal of the personal liberty laws, a guarantee that the interstate slave trade would not be interfered with and that slavery would not be abolished in the District of Columbia, protection of slavery in the territories, admission of states with or without slavery as their constitutions might prescribe, and the right of transit through free states of slave property. The last resolution provided that all of the foregoing guarantees were to be made irrepealable by amendments to the constitution. The minority also resolved that secession was of such importance it should not be accomplished until the Ordinance had been ratified at the polls by a direct vote of the people.[17]

---

[12] Montgomery *Weekly Advertiser,* January 2, 1861; also quoted in Denman, *op. cit.,* 96.

[13] Manuscript Journal of the Convention, 8. Department of Archives and History, Montgomery, Alabama.

[14] Yancey and a majority of the committee had preferred a simple ordinance of secession, but upon the insistence of the cooperationists, led by Jeremiah Clemens, had added the preamble and resolutions to the report. Denman, *op. cit.,* 145.

[15] Smith, *op. cit.,* 76.

[16] *Ibid.,* 77.

The cooperationists did most of the debating on the secession ordinance; the secessionists were more inclined to vote without debate, knowing they had a majority.[18] The cooperationists argued that secession would injure slavery rather than protect it and would bring Civil War. If secession did become necessary, Alabama should leave the Union only by joint action of a southern convention. The secessionists answered that the repeal by a constituent assembly in each state of the ordinance ratifying the Constitution of the United States was the only legal mode of secession.[19]

The Ordinance of Secession was adopted by a vote of 61 to 39,[20] every delegate voting. After it became apparent that the Ordinance would be adopted, fifteen cooperationists voted for secession in the interest of harmony, and twenty-two signed the Ordinance for the same reason.[21] The Ordinance of Secession was incorporated in the constitution of the state.

The convention accomplished the task of adjusting Alabama to the new situation by passing a series of ordinances. Some of these were of an organic nature while others were mere legislation and might be changed by a following legislature. The ordinances of an organic nature were placed in the constitution of the state. The delegates argued that those of a legislative nature were made necessary by the pressure of events. Governor Moore called the legislature into special session in January, 1861, but the convention continued to pass legislation. Among the ordinances of a legislative nature adopted by the convention was one

[17] *Ibid.*

[18] At one point in the debate Yancey called the cooperationists "traitors." Nicholas Davis of Madison, one of the cooperationist leaders dared Yancey to lead a force against North Alabama, and "we will meet him at the foot of our mountains, and there with his own selected weapons, hand to hand, face to face, settle the question of the sovereignty of the people." Quoted in Moore, *History of Alabama,* 419.

[19] Denman, *op. cit.,* 131-140; Moore, *History of Alabama,* 414-419.

[20] Smith, *op. cit.,* 118.

[21] *Ibid.;* Fleming, *op. cit.,* 118.

to provide for the military defense of the state of Alabama, a second to reorganize the militia of the state, a third to authorize colonels of volunteer regiments to appoint their own staff officers, and a fourth to provide for the purchase and sale of provisions for the state and for the issuance of state bonds. A joint committee appointed by the legislature and the convention to ascertain and fix the respective duties of the convention and the General Assembly reported on January 22 that henceforth the action of the convention should "be confined to such changes in the organic law of the state as may be demanded by the present exigencies."[22] However, the convention tabled this report and continued to pass ordinances of a legislative nature. In fact after the legislature adjourned the convention modified recent legislative enactments.[23] It was generally recognized that the power of the convention was superior to that of the legislature and in calling the convention the legislature authorized it to do whatever it found necessary to protect the "rights, interests, and honor of the State." Even so the critics said that the convention had not been called to pass legislation.

After secession was decided upon, other ordinances of an organic nature followed. These ordinances preserved the laws not inconsistent with the Ordinance of Secession, abrogated the offices of congressmen and senators, and legalized all other officeholders. All state banks, bills, coins used as money in the state, debts, acquired or vested rights, and contracts were declared legal.[24]

The convention repealed the ordinance, adopted by the convention of 1819, that ceded all waste and unappropriated lands in Alabama to the federal government, that agreed not to tax lands sold by the federal government in the state for five years after sale, and that promised not to collect a toll on any navigable waterways in the state.[25] There had been opposition to the passage of this ordinance in the convention of 1819 and much later criticism. In 1820 the legislature had memorialized Congress to remove both the limitations on taxing lands and the collection of tolls so that the state might secure funds to improve its waterways.[26] In 1830, a committee of the Alabama House of Representatives made a study of the question and reported that Congress did not have the right to bind the equal and sovereign state of Alabama in 1819.[27] Because of criticism in many states, Congress in 1847 passed an act giving up the five-year tax exemption of lands sold in the states.[28] The convention of 1861 abrogated the whole contract with the federal government and placed the repeal in the new state constitution.[29] An effort in the convention to cede the waste and unappropriated lands in the state to the Confederate government failed.[30] Jeremiah Clemens, cooperationist leader of the opposition to ceding the lands, declared that he would not under any circumstances transfer one foot of the public lands to the Confederate government since some of the seceding states had no public lands and Alabama's lands were valuable mineral lands.[31] Ordinances allocating the funds from the sale of public lands to payment of the cost of secession or liquidating the state debt also failed of passage.[32] Land ordinances, legislative rather than constitutional in nature, set up land offices in the state, provided for a policy of preemption, and ceded to certain railroads alternate sections of land. A special committee on the subject of granting lands to railroads reported that the policy begun by the United States government in the eighteen fifties was wise and should be continued by the state of Alabama.[33]

---

[22] Manuscript Journal of the Convention, 23.

[23] *Ibid.*, 121. For instance, at the request of the governor the convention modified a recent bond issue law of the legislature.

[24] Manuscript Journal of the Convention, 29; *Ordinances and Constitution of the State of Alabama*, 29.

[25] *Ordinances and Constitution of the State of Alabama, 1861,* 8.

[26] *Senate Journal* (1820), 34; Cahaba *Press,* November 26, 1821.

[27] Tuscaloosa *Alabama State Intelligencer,* June 15, 1830.

[28] *Congressional Globe,* 29 Cong., 2 sess., 128, 217.

On January 16, William L. Yancey, chairman of the committee on secession, made a report in favor of forming a provisional confederate government immediately.[34] It declared that the people of Alabama had never been dissatisfied with the Constitution of the United States, but were opposed to the violation of it by the northern majority. The report concluded that there could be no better basis for the union of the seceding states than the Federal Constitution. Yancey declared that Alabamians wanted to take with them the Constitution as "The Ark of the Covenant of their liberties."[35]

The secessionists had never opposed a union of the seceding states as the cooperationists charged. They had contended that the only legal way to secede was for each state to take individual action, leaving the union as it had gone in by the convention method, each state rescinding the ordinance of ratification of the Constitution of the United States. Only then could the seceding states legally meet to form a common government. The secessionists took the lead in providing for the election of delegates to the Confederate Convention in order to form a provisional and permanent government for the seceding states; thus following to its logical conclusion their plan of action. The South Carolina secession convention had suggested a meeting of all the seceding states to form a common government;[36] the Alabama Convention invited the

[29] *Ordinances and Constitution of the State of Alabama, 1861,* 8.

[30] *Ibid.,* 54.

[31] Montgomery *Weekly Mail,* March 8, 1861.

[32] Manuscript Journal of the Convention, 72, 131; Montgomery *Weekly Advertiser,* March 15, 1861.

[33] Manuscript Journal of the Convention, 128.

[34] Smith, *op. cit.,* 130-132.

[35] Quoted in Moore, *op. cit.,* 422.

[36] Fleming, *op. cit.,* 39.

seceding states to meet in Montgomery on February 4, 1861. After the other states had accepted this invitation, the Alabama Convention elected delegates to the Confederate Convention and instructed them to frame a provisional and finally a permanent government "upon the principles of the Constitution of the United States" to be referred to the state conventions for adoption or rejection.[37] The delegates were instructed to oppose any move in the Confederate Convention to reopen the African slave trade; to vote to keep open the Mississippi River to all states on its banks unless it had to be closed "for purposes of protection against a belligerent and unfriendly people."[38] An attempt to instruct Alabama's delegation for total population, black and white, as a basis for representation in the lower house of the Confederate Congress failed of passage.[39] The cooperationists proved to be the obstructionists, and sought unsuccessfully to strike from the resolutions that part relating to the permanent plan of government.[40] They contended that the convention had been elected to decide on secession and that a new convention fresh from the people should be elected for the purpose of deciding on a common government.[41]

On March 11, the Confederate Constitution was adopted and submitted to the state conventions for ratification.[42] The following day the Alabama convention began debate on ratification. Although the cooperationists objected to no particular part of the constitution, they insisted that it be submitted to a vote of the people of the state.[43] The secessionists were able to defeat this move but the press of North Alabama insisted that the new constitution should be submitted to the people. The Tuscaloosa *Monitor* said:

> It is to be hoped that the present convention will not arrogate to itself the power to bind the State, but that so important a matter, as the formation

---

[37] Smith, *op. cit.*, 132. The state convention elected obscure men, with the exception of J. L. M. Curry, to the Confederate Convention. They passed over the members of the state convention, with two exceptions, and members of the legislature. Moore says: "This extraordinary situation resulted from the cooperationists' distrust of the secession leaders; from the desire of the secessionists to conciliate the cooperationists, whom they had antagonized a great deal but whose support they must have; and from the desire of dissatisfied politicians to squelch certain prominent leaders, particularly William L. Yancey." Moore, *op. cit.*, 423.

[38] *Ordinances and Constitution of the State of Alabama, 1861,* 33-34.

[39] Manuscript Journal of the Convention, 44.

[40] Smith, *op. cit.*, 137.

[41] *Ibid.*, 141.

[42] The Alabama Convention had adjourned on January 29 to meet again on March 4 in order to give the Confederate Convention time to set up a provisional and permanent plan of government.

[43] Smith, *op. cit.*, 323. Alabama delegates to the Confederate Convention had objected to certain features. See William R. Robinson, *Justice in Grey,* 44, 49, 60; Albert N. Fitts, "The Confederate Convention," *Alabama Review,* II (April, 1949), 83-99 (July, 1949), 189-210. See also E. Merton Coulter, *The Confederate States of America, 1861-1865, A History of the South,* VII, 27-32, for changes which the Confederate Convention made in the Constitution of the United States.

of the new government, will be referred to the people for their full adjudication. Nothing short of this will satisfy them and they will be satisfied with nothing less. We have been precipitated out of the union without this reference. If it is done again in so important a measure as this, the people may inquire, if they have no rights outside the convention.[44]

The convention ratified the Constitution of the Confederate States of America by a vote of 87 to 5,[45] many of those who insisted on submission voting for ratification when the majority refused to submit it. The arguments of the majority that the times called for immediate action, that the people had elected a sovereign convention in December and expected it to act on all questions of an organic nature, that the reference of the question to the people would give rise to dissension and weaken the Confederate cause, had prevailed. The ordinance of ratification was incorporated in the constitution of Alabama.[46]

The ratification of the Confederate Constitution was one of the major accomplishments of the convention. The convention was now relieved of all problems of a federal nature which had been handled by the United States government prior to the passage of the Ordinance of Secession and by the state convention in the interim period. Ordinances had been adopted to solve these problems, many of which would have had to become a part of the constitution of the state had Alabama remained a sovereign and independent state. Ordinances had been passed by the state convention transferring the jurisdiction of the federal courts in the state to the state circuit and chancery courts and the Mobile city court;[47] giving all cases affecting ambassadors and other public ministers to the supreme court of Alabama; providing that the laws of the United States relating to the denomination and value of gold and silver coin of the United States and other foreign countries should be adopted as the laws of Alabama; and seizing all federal forts, arsenals, and other property in the state.[48] After the formation of the Confederate States of America, the convention adopted an ordinance providing that all ordinances adopted by the Congress of the Confederate States of America affecting matters of a federal nature should supercede the ordinances of this convention.[49] The state militia and all federal property that the state had seized, including the custom house and marine hospital at Mobile, light houses in Mobile Bay, forts, arsenals, arms and ammunition were turned over to the Confederacy.[50] On March 12 the election of Jefferson Davis and Alexander H. Stephens to head the provisional Confederate government was unanimously approved by the convention.[51]

---

[44] Tuscaloosa *Monitor,* February 1, 1861. The Confederate Constitution was not submitted in any of the states. Coulter, *op. cit.,* 31.

[45] Smith, *op. cit.,* 364.

[46] *Ordinances and Constitution of the State of Alabama, 1861,* 42.

[47] The Confederacy, when organized had no supreme court. The Alabama Superior and Supreme Courts upheld the jurisdiction of the Confederate Court for the district of Alabama. Robinson, *op. cit.,* 448, 458; Coulter, *op. cit.,* 121-123.

[48] *Ordinances and Constitution of the State of Alabama, 1861,* 6-54.

[49] *Ibid.,* 22.

Although constitutional reform was secondary in importance to the Ordinance of Secession and the ordinances to adjust Alabama to the new situation which followed, changes in Alabama's constitution became one of the main objectives of the convention. A committee of nine members on the constitution was appointed the day after the Ordinance of Secession was adopted.[52] John Cochran, chairman of the committee, was a lawyer, former member of the Alabama legislature, and an ardent secessionist. The committee was composed of seven secessionists and two cooperationists; most of whom were from the Black Belt and South Alabama. There were six lawyers and one physician on the committee.[53]

On January 24 the committee made a report[54] recommending certain changes in the constitution, most of which were adopted by the convention. The words "United States" were stricken from the Constitution of 1819 wherever they occurred. The preamble of the Constitution of 1819 was changed from "We the people of the Alabama Territory, having the right of admission into the General Government, as a member of the Union, consistent with the Constitution and laws of the United States" to "We the people of the State of Alabama, having separated ourselves from the government known as the United States of America, and being now by our representatives in convention assembled, and acting in our sovereign and independent character." There were no changes in the bill of rights.

The report recommended certain basic changes in the legislative department in line with the criticisms of the eighteen fifties. It provided for annual sessions of the legislature limited to thirty days; prohibited the passage of any "special law . . . for the benefit of the individual or private corporations, in cases which are provided for by general law, or where the relief sought, can be given by any court of this state"; gave the state the right of eminent domain; and forbade the legislature to delegate power to levy taxes to individuals or private corporations, or to levy taxes for the benefit of individuals or corporations, other than municipal corporations. Almost every change in the article recommended by the committee and adopted by the convention limited the powers of the legislature.

Few changes were made in the executive article. The constitutional provision of 1819 that the governor of Alabama should be a native born citizen of the United States was changed so as to read "a citizen of the

---

[50] *Ibid.*, 36-41, 43.

[51] Manuscript Journal of the Convention, 91.

[52] *Ibid.*, 13.

[53] The profession of two members of the committee is not known.

[54] Manuscript Journal of the Convention, 31-41.

State of Alabama and a native of one of the states or territories, lately styled the United States of America."[55] The secretary of state was made next in line to the governorship after the president of the Senate and the speaker of the House.[56] The secretary of state, state treasurer, and comptroller were to be elected biennially by the legislature.[57]

Few changes were made in the article on the judiciary. The convention struck out "United States" wherever it occurred and incorporated the amendments of 1830 and 1850 into the body of the constitution.[58] The report of the committee provided that divorces might be granted by suits in chancery without the consent of two-thirds of the legislature.[59] This change was adopted by the convention and for the first time the Alabama legislature was relieved of the tremendous task of reviewing and voting on every divorce granted in the state.

The committee report on slavery forbade emancipation under any circumstances.[60] But the liberal clauses in the Constitution of 1819 protecting the life of the slave, guaranteeing him trial by jury, and making it as great a crime to dismember or kill a slave as a free white person, were not stricken out. The report contained a section which the convention refused to adopt providing that "free persons of African descent having as much as one-eighth Negro blood, may be reduced to slavery by law, unless such persons shall remove from the state within a period prescribed by law."[61] The convention, in which North Alabama had a larger representation than in the committee, was more liberal on the question than the committee. Considering the circumstances under which the convention met, it is surprising that harsh provisions on the question of slavery were not written into the fundamental law.

The convention decided that the committee of nine was too large to do the work of revising and writing the final draft of the constitution and on motion of John Tyler Morgan of Dallas County, a committee of three was authorized on revision of the constitution.[62] President Brooks appointed John Tyler Morgan, John Cochran, and John D. Webb to this committee.[63] Resolutions from the floor of the convention for amending the constitution were referred to this committee, which in most cases reported the amendments inexpedient. The opinion prevailed that the constitution should not be changed more than necessary because of the crisis that faced the state.[64] But a part of several weeks was spent in debating alterations presented from the floor of the convention and some basic changes were made.

---

[55] *Ibid.*, 35.

[56] *Ibid.*

[57] *Ibid.*, 36. The provisions for biennial sessions and annual elections by the legislature of the state treasurer and comptroller had caused much trouble in the eighteen fifties. See Chapter V.

[58] *Ibid.*

[59] *Ibid.*, 37.

[60] *Ibid.*

[61] *Ibid.*, 37.

[62] *Ibid.*, 41.

[63] *Ibid.*, 53.

[64] *Ibid.*, 81, 90, 133.

Although no reforms in banking were contained in the report of the committee, the convention struck out the clauses authorizing the state to subscribe two-fifths of the capital stock of any bank created and to have a proportionate control of the board of directors.[65] This had long been advocated by those who wished to divorce the state from banking.[66] For some time the state legislature had been violating the constitution by chartering banks without state subscriptions.[67] The convention added to the already stringent banking regulations by providing that if any bank suspended specie payments, the charter of the bank would be forfeited unless the following legislature voted to legalize such suspension.[68]

The convention showed a further distrust of the legislature by placing a limitation on the legislature's power to incur debt. This ordinance was introduced by ex-Congressman James Ferguson Dowdell of Chambers County and originally provided that the legislature could incur no debt on the credit of the state "unless that act which shall create the debt shall, at the same time, provide the means of its liquidation."[69] After bitter opposition arose, the ordinance was changed to provide that no debt could be incurred other than for military defense against invasion, except by a two-thirds vote of the legislature; nor could the legislature guarantee the debt of any corporation, person, or other state without a like concurrence.[70] Even the modified ordinance became one of the bitterest issues of the convention, many arguing that it would so limit the state as to restrict or prevent internal improvements, education, and progress. The final vote placing this limit on the legislature was 59 to 20.[71] Some limitation on the power of the legislature to incur debt had been one of the most constantly agitated constitutional reforms in the eighteen fifties.[72]

Amendments suggested from the floor of the convention sought to increase the power of the governor by requiring a two-thirds rather than a simple majority to override his veto,[73] and to lengthen his term from two to four years.[74] Both were defeated, although the crisis demanded a stronger executive.[75]

---

[65] *Ibid.*, 102; *Ordinances and Constitution of the State of Alabama, 1861,* 104.

[66] Wetumpka *Argus,* July 31, 1839; Huntsville *Southern Advocate,* June 30, 1852.

[67] *House Journal* (1847-1848), 19.

[68] *Ordinances and Constitution of the State of Alabama, 1861,* 105. At this time nearly all banks had suspended specie payment because of the crisis. The state soon requisitioned all specie in Alabama banks and gave the banks paper in return, thus legalizing the suspension. Huntsville *Southern Advocate,* December 26, 1860; Montgomery *Advertiser,* October 8, 1865.

[69] Manuscript Journal of the Convention, 80.

[70] *Ibid.*, 116-118; Montgomery *Weekly Mail,* March 22, 1861.

[71] Manuscript Journal of the Convention, 121.

[72] Montgomery *Advertiser,* May 22, 1852, April 23, 1856. The Troy *Southern Advertiser,* April 2, 1861, in an editorial entitled "Check on Appropriations" praised the limitation, but said we "were rather favorably disposed to the original and more stringent prohibition."

John Tyler Morgan of Dallas County led a conservative movement in the convention to take from the people the election of county and circuit judges, which had been given them by amendment in 1850. A lengthy report on the subject was made by Morgan, chairman of the committee of three on revision. The preamble to this report declared

> The Committee on the Constitution have instructed me to report, that in the opinion of the committee it is not in accordance with the true theory o our government, nor is it sanctioned by a wise public policy, that the judges of the superior courts of this state, should be elected by a direct vote of the people. . . . In the original formation of the early state constitutions, as well as in the Constitution of the United States, the judicial department was made independent of the direct influence of the people. They had a voice in the selection of agents who should appoint the judges, which agents were directly responsible to the people for their conduct in office. . . . Removal of the judicial department beyond the reach of the direct influence of the voting power of the people was designed to be a part of the ground-work of republican institutions, and a departure from the plan is a departure from the form of government designated as republican by our fathers.[76]

The report further charged that election of judges by the people in northern states had been partly responsible for secession, since judges elected by the northern rabble had refused to give the South its rights under the Constitution of the United States. To please their constituents they had upheld the personal liberty laws and violated the Constitution of the United States. The report ended by requesting that the convention provide that county and circuit judges be appointed by the governor with the consent of the Senate, but the convention refused to adopt the report of the committee.[77]

Ordinances to reduce the nine hundred square mile limitation on the size of counties;[78] to increase the power of the justices of the peace in civil cases;[79] to provide for the holding of one session of the Alabama Supreme Court in Huntsville each year;[80] to make the amending process easier by requiring a simple rather than a two-thirds majority of the legislature;[81] to place a prohibition in the constitution against removal of the capital from Montgomery;[82] and to permit the sheriff to succeed himself[83] were all defeated by the convention. The majority felt that because of the crisis it was inexpedient to make further alterations in the constitution. The convention also refused to submit the new state constitution to a vote of the people, although North Alabama delegates demanded submission. The convention adjourned on March 21 after having been in session twenty-nine working days. It had adopted the Ordinance of Secession, played its part in setting up the Confederate government, and made basic alterations in the constitution of Alabama.

---

[73] Manuscript Journal of the Convention, 91, 114.

[74] Montgomery *Daily Confederation,* January 23, 1861.

[75] Manuscript Journal of the Convention, 114.

[76] *Ibid.,* 81-83.

[77] This attempt, directed by John T. Morgan, was the most important move the Alabama convention to turn back the progress that democracy had made befor the war. Apparently it had little support in the convention as the journal of th convention does not indicate that it came to a vote. For much stronger conserva tive constitutional tendencies in the secession convention of Virginia, see: Henr Thomas Shanks, "Conservative Constitutional Tendencies of the Virginia Secessio Convention," Fletcher M. Green (ed.), *Essays in Southern History,* 28-48.

[78] Manuscript Journal of the Convention, 65, 76, 88. The opposition said th the change would endanger many county seats, increase the annual expenses the state, make it necessary to increase the number of representatives and senators and make it more difficult and expensive to maintain efficient county governmen

---

[79] *Ibid.*, 76, 81. This would give cases involving up to $100 instead of $50 to justices of the peace. In 1843, the legislature had submitted an amendment to raise the limit to $100, which the people defeated. *Acts of Alabama* (1842-1843), 224.

[80] Lawyers of North Alabama memorialized the convention on this subject. This had been a demand of North Alabama since the capital was moved to Montgomery in 1846. Manuscript Journal of the Convention, 115.

[81] Montgomery *Weekly Mail*, January 31, 1861.

[82] Manuscript Journal of the Convention, 89, 133, 135.

[83] *Ibid.*, 65, 90.

CHAPTER VII

REORGANIZATION FOLLOWING THE WAR

There was little agitation for constitutional change in Alabama during the Civil War. The people of the state were too busy with military and economic problems to consider constitutional reform, but after the defeat in 1865 Alabama was without a legally recognized constitution or government. President Andrew Johnson organized a provisional government with the appointment of Lewis Eliphalet Parsons of Talladega, Alabama, as provisional governor.[1] All those not excluded by President Johnson's proclamation of May 29, 1865, might take the amnesty oath and regain their citizenship;[2] excepted classes might apply to the President for personal pardon.[3] In order to regain the right to vote, one whose citizenship had been restored had to go before a registration official, appointed by the provisional governor, in the county in which he voted, register, and again take the amnesty oath.[4] One also had to meet the suffrage requirements of the state as they existed prior to January 11, 1861, the day the state left the Union.

On July 20, 1865, Governor Parsons called for an election on August 31 of delegates to a constitutional convention to take steps to restore Alabama to the union.[5] Each county in the state was to have as many delegates as it had members of the House of Representatives on January 11, 1861. All eligible to vote in the election were also eligible to become candidates for the convention.

---

[1] Parsons had opposed secession in 1861 and had been an obstructionist during the war who had "aided the Confederacy materially but damned it spiritually." Moore, *op. cit.,* 461. Under instructions from Washington, Parsons declared all the laws of Alabama enacted before January 11, 1861 in effect, except those concerning slavery, and tried unsuccessfully to build a new civil government on the remains of the pre-Civil War local and state government. Much lawlessness prevailed and loyal state judges and juries who could take the amnesty oath were hard to find. For several years federal courts and federal departments in the state were virtually inoperative in many localities, because lawyers, jurors, and federal officials could not be found who could take the "iron clad" oath, which Congress refused to modify. The provisional government proved subservient to the military authorities.

[2] The amnesty oath was as follows: "I, ———, do solemnly swear (or affirm) in the presence of Almighty God, that I will henceforth faithfully support, protect and defend the Constitution of the United States, and the Union of the states thereunder; and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion, with reference to the emancipation of slaves: So help me God."

[3] Included in this group were leaders of the rebellion and those owning property valued at $20,000 or more in 1860.

[4] Proclamation of Governor Parsons in Montgomery *Advertiser,* August 10, 22, 1865.

[5] *Ibid.,* August 10, 1865.

The newspapers of the state generally urged those who could meet the requirements to register and vote.[6] The Montgomery *Advertiser,* in a number of editorials declared that this "is no time to allow old prejudices to control our actions—such a course is neither wise or manly. To meet the demand of the occasion is at once a test of good sense and good citizenship. . . . Many stand back and have not taken the amnesty oath, and it may be possible that but few votes will be cast."[7] The Huntsville *Advocate* in editorials on July 12 and 19 urged all who could to register and vote. The newspapers also urged that "union" men be elected. The Montgomery *Advertiser* of August 31 said that delegates should be elected "to the convention whose former political positions will not be an incubus on the administration in its struggle with the dominant radical excluders of the North."

Some 56,825 persons took the registration oath before August 31, but fewer than that cast ballots.[8] In sixteen of fifty-two counties only 7,359 persons voted.[9] The total vote in the state was probably less than 30,000, whereas the total vote for members of the convention of 1861 had been 65,529.[10] However, considering the disfranchised classes, the war and its aftermath, and the tendency of many to wait and see, the number of votes was respectable. The New York *Times* attributed the small vote cast in some counties to "the confusion and bewilderment of the people at the sudden transition of affairs."[11]

---

[6] In spite of the attitude of cooperation, which most of the newspapers of the state were taking, Benjamin C. Truman, correspondent of the New York *Times,* who was in the state during the campaign, reported that the Huntsville *Advocate* edited by William Bibb Figures was the only loyal newspaper in the state. He said that the Montgomery *Mail,* Montgomery *Advertiser,* Mobile *Tribune,* Mobile *Times,* Mobile *Register,* Selma *Times,* and Selma *Messenger* were all disloyal. See New York *Times,* October 31, and November 2, 1865. Beginning with the convention of 1865 the northern press gave extensive coverage to all of Alabama's constitutional conventions.

[7] Montgomery *Advertiser,* August 29, 1865.

[8] The registration and election figures cited in this paragraph are those sent the convention by the provisional secretary of state. His report said that the sheriffs of only sixteen counties had sent in the election figures. Montgomery *Advertiser,* September 21, 1865.

[9] In Morgan County 1,254 were on the registration list but only 681 voted; in Autauga County 737 were on the registration list and 355 voted; in Russell County 1,499 were on the registration list and 910 voted; and in Lawrence County 858 were on the registration list and 316 voted.

[10] The vote on delegates to the convention of 1861 is taken from Lewy Dorman, *Party Politics in Alabama from 1850 through 1860,* 194. W. L. Fleming, *Civil War and Reconstruction in Alabama,* 358, says that the total vote cast in the election for the convention in 1865 was about 56,000 and cites the New York *Herald,* October 15, 1865. The figures sent the convention by the secretary do not agree, but indicate less than 30,000 voted. The number registered was near 56,000.

[11] New York *Times,* September 25, 1865.

The convention met in Montgomery on September 12 in order to carry out President Johnson's plan of restoration. The Montgomery *Advertiser* declared the convention "to be the most important body ever assembled in our state, and in their deliberations the weal or woe of Alabama is intimately bound up."[12] Ninety-nine out of the one hundred delegates were present during most of the session of the convention; one delegate did not attend at all. The Montgomery *Advertiser* of October 1, 1865, analyzed the convention according to the profession, age, religion and past political affiliation of its members.[13] The editor found that twenty-nine were lawyers, six physicians, forty-one planters and farmers nine merchants, seven ministers, two teachers, one newspaper editor, and three probate judges. Forty-seven members, or less than half, had been in public life prior to the convention; some had held high positions. Two had been governor of Alabama, one a United States senator, one a United States representative, and one minister to Belgium.[14] Eleven members of the convention of 1865 had been members of the convention of 1861, ten of whom had been cooperationists and had voted against the ordinance of secession. The convention was a body of old rather than middle-age men, forty-four members being over fifty years of age and only eighteen under forty. Younger men had taken too large a part in the Civil War to be eligible for leadership. Twenty-six delegates were natives of Alabama, twenty-four were born in Georgia, eleven in South Carolina, nine in North Carolina, eight in Tennessee, eight in Virginia, three in Maryland, three in Kentucky, six in northern states and one in Ireland. Twenty delegates were Methodist, nineteen Baptist, sixteen Presbyterian, five Episcopalian, and thirty-four were not members of any church.

The political affiliation of the delegates in the presidential campaign of 1860 is significant. Forty-five voted for John Bell, thirty for Stephen Arnold Douglas, and twenty-four for John Cabell Breckinridge. In the campaign for the convention in 1860, eighteen voted for secessionist candidates and the other eighty-one voted for cooperationists, but some of the eighty-one stood for the union under any circumstances.[15] The loyalty of a majority of the members of the convention of 1865 could hardly be questioned, although, as the New York *Times,* September 2 1865, observed, the convention was "made up of men who have heretofore been always in the minority." The editor of the *Times* said that the Alabama convention "like that of Mississippi is generally composed of old Whigs, who originally were utterly opposed to the secession movement. They belonged to the Union Party of 1860, which in all probability, would have defeated the secession ordinance had it been submitted to the people and which actually did carry more than one third of the secession convention. . . . Their present earnestness and good faith cannot be doubted."[16] However, the convention of 1865 was notably inferior in experience and ability to the body that carried Alabama out of the union in 1861.

---

[12] Montgomery *Advertiser,* August 27, 1865.

[13] Apparently the editor secured his information from each member of the convention.

[14] Montgomery *Advertiser,* October 1, 1865. Benjamin Fitzpatrick had been senator and governor; John W. Winston, governor; Alexander White, congressman; and Elisha Y. Fair, minister to Belgium under Franklin Pierce and James Buchanan.

[15] *Ibid.*

The convention of 1865 contained two loosely organized parties; the conservative men in 1861 with a few converted "fire eaters," and the anti-Confederates of North Alabama. There were about sixty-three conservatives from South Alabama and thirty-six North Alabama anti-Confederates.[17] Feeling between North and South Alabama was very bitter, although both sections were soon brought closer together by the Radical program of Reconstruction. North Alabama felt that the leadership of South Alabama had brought the Civil War and the disaster that followed. An editorial in the Huntsville *Advocate,* which gave advice to the "members to be of the state convention," said:

> There has never been a community of interest nor an identity of feeling and sentiment in Alabama, owing to the geographical division of the state. Its people are strangers to each other, and there is but little travel and less trade between the extreme localities. North Alabama trades to Nashville, Louisville, Memphis, etc.; south Alabama to Mobile; travel, social intercourse, etc., have followed the course of trade, and thus there has been an antagonism of interests, of feeling and sentiment. Politically, the case has been the same, and a struggle for supremacy took place, which finally resulted in favor of south Alabama. She grasped the lions share of state honors, offices, benefits, etc., and rather imposed an undue portion of the public burthens upon the weaker and less wealthy section, north Alabama:—And this state of things was what enabled the stronger section of the state, with less white population, to accomplish secession.
>
> Now that old things have passed away, and a new era in the state's history is commencing, it becomes her wise men to adopt a policy and to give it success too, which will make one people of her citizens—identify their interests, give them social and trading facilities, and thus let their feelings and sentiments become more homogeneous. This can only be done by leveling the great geographical barriers which still divide the state. Unite north and south Alabama by railroads, and do it by state aid, as a great state necessity.[18]

After temporary organization, each member took the amnesty oath before Governor Parsons.[19] Ex-Governor and ex-Senator Benjamin

---

[16] New York *Times,* September 25, 1865.

[17] Fleming, *op. cit.,* 359.

[18] Huntsville *Advocate,* July 12, 1865.

[19] New York *Times,* September 23, 1865.

Fitzpatrick was unanimously elected president. Although he had withdrawn from the Senate in 1861, he had opposed secession; his colleague, Clement Claiborne Clay, had been the ardent secessionist. Fitzpatrick retired from politics during the war and was now available for the presidency of the convention.[20]

In speeches, proclamations, and talks with southern leaders, President Johnson made it clear that he expected each state convention to pass ordinances abolishing slavery, recognizing the legal rights of the Negro, repealing the ordinance of secession, repudiating the war debt of the state, providing for the election of state and federal officials, and making such changes in the constitution of the state as necessary because of the abolition of slavery and the defeat of secession.

Only the Mississippi restoration convention had completed its work before the Alabama convention met. It had received the commendation of the President of the United States.[21] The newspapers of Alabama advised the Alabama convention to follow the example of Mississippi and accept the terms of restoration.[22] "The task of our convention [said the Mobile *Register,* September 12, 1865] will be much facilitated by the precedents of Mississippi." The Montgomery *Advertiser,* September 13 1865, declared "a plain alternative is before them, either to stand aloof from the old government in sullen indifference to their fate and court the destruction which awaits them at the hands of an irrepressible military despotism, or, to accept the proffer of President Johnson, take the amnesty oath, rescind the ordinance of secession, acknowledge the abolition of slavery, and return to the union. . . . Of all things a complete reconciliation is most needful to secure the ends which all good and patriotic men have in view."

Important committees were appointed on the restoration of Alabama to the Union and the repeal of the ordinance of secession.[23] William S. Mudd of Jefferson was chairman of the former and Walter H. Crenshaw of Butler, chairman of the latter. Both had been Whigs before the war and had opposed secession in 1861. Committees on the state war debt and the state constitution were headed by John Archie Elmore of Montgomery and William P. Webb of Greene.[24] Webb had opposed secession in 1861 but Elmore had been an ardent secessionist and commissioner to South Carolina.

---

[20] Moore, *op. cit.,* 415; Owen, *op. cit.,* III, 582.

[21] Huntsville *Advocate,* August 31, 1865.

[22] *Ibid.;* Montgomery *Advertiser,* September 12, 1865. The New York *Time* September 15, 1865, said that "the action of the body will pretty well follow th of Mississippi. . . . In any event the doings of the convention will be of a decidedly conservative tone."

[23] *Journal of the Convention of 1865,* 15; Montgomery *Advertiser,* September 1 1865.

[24] Montgomery *Advertiser,* September 15, 1865.

The convention first began debate on the abolition of slavery. The majority report, made by William S. Mudd of Jefferson, declared that "as the institution of slavery had been destroyed in the state of Alabama, hereafter there shall be neither slavery nor involuntary servitude in the state, otherwise than for the punishment of crime, whereof the party shall be duly convicted."[25] It further provided that all references to slavery in the state constitution should be deleted, and that it shall be the duty of the next session of the legislature "to pass such laws as will protect the freedmen of this state in the full enjoyment of all their rights and property, and guard them and the state against any evils that may arise from their sudden emancipation." Ex-Congressman Alexander White of Talladega, who had been a Union-Whig before the war, reported an ordinance for the minority which acknowledged that slavery had been abolished by proclamation of the President and laws of the United States and pledged the state to obey them "unless and until the same shall have been declared invalid by the Supreme Court of the United States." White would not have the convention of the sovereign people of Alabama participate in the abolition of slavery by declaring it abolished. The minority report would require the legislature to "enact just and humane laws and regulations for the freedmen in the State of Alabama."[26] An ordinance in opposition to the majority and minority reports, which provided that the convention strike out all references to slavery in the constitution and pass no ordinance at all was defeated,[27] and the majority and the minority reports became the subject of debate.

Proponents of the minority report contended that since Alabama was never out of the union and the Constitution of the United States guaranteed slavery, the institution of slavery had not been destroyed in the state. The convention should allow the Supreme Court of the United States to decide. Neither Lincoln nor Congress had abolished slavery because it was protected by the Constitution of the United States and could be abolished only by amending that document. They predicted that if an ordinance abolishing slavery were adopted, Congress would then refuse to seat Alabama's representatives and force Negro suffrage upon the state.[28]

[25] *Ibid.*, September 17, 1865; *Journal of the Convention of 1865*, 30.

[26] *Journal of the Convention of 1865*, 30; Montgomery *Advertiser*, September 17, 1865. Subsequently, White went over to the Republican Party. Although the Thirteenth Amendment had been submitted to the states for ratification, it was not adopted until December 18, 1865, some time after the adjournment of the Alabama convention.

[27] Montgomery *Advertiser*, September 23, 1865.

[28] *Ibid.*, September 19, 21, 27, 1865; New York *Times*, September 30, 1865. Chief Justice Salmon P. Chase and other northern visionaries and radicals were already talking Negro suffrage. E. Merton Coulter, *The South During Reconstruction, A History of the South*, VIII, 34. Coulter says that wording of the clauses abolishing slavery was also "important in any future demand for compensation." *Ibid.*, 35.

Advocates of the majority report declared that if the convention went no further than to vote for the ordinance reported by the minority, then that body had been prematurely assembled and would not affect in the least the state's condition in regard to reconstruction and restoration of rights as a member of the Union. Slavery had been destroyed no matter whether it was brought about in a constitutional or an unconstitutional manner. It had been destroyed by the sword and no court could offer a remedy. The Supreme Court could not settle this matter; the North had even refused to acquiesce in the Dred Scott decision. If slavery had not been destroyed, why were the people of Alabama making contracts with their former slaves.[29] John Drake of Huntsville declared that slavery had been "destroyed by the laws of Congress and the sword which is superior to the Constitution."[30] John Archie Elmore, secessionist in 1861 and former law partner of William L. Yancey, made one of the ablest speeches in defense of the majority report. He declared that "we cannot shut our eyes to the fact that upwards of 400,000 slaves in this state have been set free, and that they can never be reduced to slavery. . . . We must accept the situation with all its evils and burthens and make the most of it."[31] Charles Carter Langdon of Mobile, urging the convention to adopt the majority report, said: "We have no choice in this matter. We must accept the terms of our conquerers. We are a conquered people. . . . There is not a right that we can exercise but by consent of our conquerers. Our streets are full of military, our civil government is provided for us without our choosing—and by the tinkling of a little bell in Washington, we may be dispersed in a moment and marched out of this hall at the head of a file of soldiers. And we are here as free—as the representatives of free men. I wish I could think so. There are no free men in this southern land. We are all slaves, all manacled."[32] His speech expressed the sentiment of the majority, that slavery had been destroyed by the war and that any position the convention might take on the institution made no difference except as it might affect the restoration of Alabama to the union. On September 21, the minority report was defeated by a vote of 79 to 17.[33] Only one of the seventeen votes came from North Alabama. The majority report was adopted by a vote of 89 to 3.[34]

---

[29] Montgomery *Advertiser,* September 19, 1865; Huntsville *Advocate,* September 28, 1865; New York *Times,* September 30, 1865.

[30] Huntsville *Advocate,* October 12, 1865.

[31] *Ibid.,* October 12, 1865. Elmore's speeches on slavery and other issues s impressed the correspondent of the New York *Herald* that he wrote: "Elmore i without doubt, in a legal sense, the greatest man in the convention. An out an out secessionist from the start, he has by his counsel and advice done more t bring the weaker members of the convention to a realizing sense of the duty required and expected of them than any man here. He takes true and comprehensive views of the whole subject, and has taken pains to impress them on the convention." New York *Herald,* October 1, 1865. The Montgomery *Advertiser* o September 24, 1865, said of Elmore's influence in the convention: "Mr. Elmore seeing as the secessionists generally concede, that the sword—the highest tribunal known to nations—has decided against us, gracefully yields the points lost in t contest, and brings his great powers and well known conservative influence to bea to clear the constitution of the evidences of an institution already extinct, a restore the state to her position as a free and equal member of the union."

[32] Huntsville *Advocate,* October 12, 1865.

Protection of the Negro's legal rights but not Negro suffrage was a part of President Johnson's plan of restoration for the southern states.[35] The New York *Times* said, "it embraces nothing more than—first, marriage; second, property; third, status in the civil courts."[36] The New York *World* declared that "the question of Negro suffrage and Negro testimony have no more to do with each other than female suffrage and female testimony."[37] The Huntsville *Advocate* said that "we trust our people will look at things practically. The Negro is free, and as a freeman the government will protect him in his legal rights. It is our duty to ourselves to save ourselves from further loss and trouble, to accord the Negro what secession and the war have secured to him. Legal rights and political privileges are essentially different. He has been granted the former—not the latter."[38] However, the convention refused to place definite provisions in the state constitution "granting the freedmen the rights of holding property and testifying in courts of justice."[39] Instead it followed the Mississippi convention and provided that the next legislature "pass such laws as will protect the freedmen of this state in the full enjoyment of all their rights of person and property, and guard them and the state against all evil that may arise from their sudden emancipation."[40] The convention's reluctance to incorporate positive provisions guaranteeing the Negro's civil rights in the constitution caused extensive criticism in the North. The New York *Times* said that the action gave to the legislature "the privilege of making the organic law of Alabama."[41] Nevertheless, Negro testimony in the courts would be allowed until the legislature met as Parsons had issued an order to that effect.[42]

[33] Montgomery *Advertiser,* September 23, 1865; *Journal of the Convention of 1865,* 50.

[34] Montgomery *Advertiser,* September 23, 1865. Because of fear of the freedmen and despite the argument that it would be misconstrued in the North, the convention adopted an ordinance declaring that the abolition of slavery should not limit the power of the legislature to pass laws to regulate the freedmen. John Wesley Shepherd (ed.), *Constitution and Ordinances of 1865,* 57.

[35] President Johnson thought that granting the suffrage to the more intelligent Negroes might be used to combat Northern Radicals, but finally decided against Negro suffrage. Coulter, *The South During Reconstruction,* 34.

[36] New York *Times,* October 30, 1865.

[37] New York *World,* October 12, 1865.

[38] Huntsville *Advocate,* August 31, 1865.

[39] New York *Herald,* September 24, 1865; *Journal of the Convention of 1865,* 75.

[40] Montgomery *Advertiser,* September 23, 1865; *Journal of the Convention of 1865,* 75.

[41] New York *Times,* September 30, 1865.

[42] Huntsville *Advocate,* August 31, 1865; Moore, *op. cit.,* 465.

The wording of the repeal of the ordinance of secession became a major issue. Among the proposed phrases were the following: "unconstitutional and therefore illegal and void"; "the so-called ordinance of secession, null and void"; "unconstitutional, null and void"; "unauthorized and void from the beginning"; "it is and was unconstitutional; "null and void"; and "unauthorized, null and void."[43] The committee on the ordinance could not agree and submitted a majority and a minority report.[44] The majority reported an ordinance which simply declared the ordinance of secession "null and void." A minority provided that the ordinance of secession "was unauthorized, and is hereby declared to have been and is null and void." The former declared secession null and void as of 1865; the latter declared it unauthorized and null and void in 1861.

James Clark of North Alabama made the main speech in favor of the minority report.[45] Clark contended that the assertion contained in the majority report was not emphatic enough to satisfy the people of the North; it did not clear the record; it left a loop-hole of escape from an absolute and unqualified condemnation of secession.[46] He thought that the ordinance of secession had been "unauthorized"; the convention of 1861 had not submitted it to the people; neither the people of Alabama nor the Constitution of the United States authorized it. Why not declare that it was unauthorized? He contended that the language of the majority report would reserve the right of secession for a future day.

Advocates of the majority report argued that the ordinance of secession was authorized; that the convention was elected by the people of Alabama as a sovereign convention and had the right to take Alabama out of the union without submission of the question to the people.[47] Secession as well as slavery had been defeated by the sword, but that did not mean the right did not exist in 1861. To declare the ordinance of secession unauthorized would mean that the convention of 1861 had usurped authority and that members of the convention and those wh supported it were traitors. It would even deny the revolutionary right to secede and Alabama need not debase herself by declaring that secession was unauthorized in the beginning.

On September 26, the convention voted down the minority report by a vote of 69 to 21.[48] Most of the twenty-one delegates voting with the minority were from North Alabama. The convention then adopted the majority report simply declaring the ordinance of secession "null an void" by a vote of 92 to 0.[49] In an editorial the Montgomery *Advertiser* of September 26 declared that we "accept the abrogation of secession, like the abolition of slavery as one of the unavoidable necessities growing out of our failure to establish southern independence, and shall faithfully abide the results."

---

[43] *Journal of the Convention of 1865,* 16, 57, 58.

[44] Montgomery *Advertiser,* September 17, 1865.

[45] Huntsville *Advocate,* October 19, 1865; Montgomery *Advertiser,* Septembe 26, 1865.

[46] Huntsville *Advocate,* October 19, 1865.

[47] *Ibid.;* Montgomery *Advertiser,* September 26, 1865.

[48] *Journal of the Convention of 1865,* 59.

President Johnson's plan of restoration called for the repudiation of the state war debt. Most of the state's war debt was owed to creditors in South Alabama, and as might be expected the press and delegates from North and South Alabama differed on the issue.[50] The Huntsville *Advocate* was vigorous in support of repudiation, but the Montgomery *Advertiser* and the Mobile *Register* were opposed. In an editorial the Huntsville *Advocate* of August 17 declared that "the money power which took care of itself during the war and added to its resources and needs no guardian, now seeks to make the people liable for the immense war debt the bastard Secession State Government created to aid in overthrowing the United States. That bastard state organization was not the State of Alabama admitted into the Union, 14th. December, 1819. It was misbegotten on the 11th. of January, 1861, and usurped the powers guaranteed by the United States to the legitimate State Government." The editorial charged that the "money power" was seeking to have the people of the state burdened with a state war debt of over $20,000,000,[51] on which the interests would be $1,600,000 annually. For every dollar paid before the war the taxpayer would now have to pay three or four dollars. The people of Alabama would have all that they could do to pay the bonded debt of the state made prior to the war. The editor contended that "the war debt is held mainly by money corporations, speculators, blockade runners, capitalists, and those in and out of the state, who have made money out of the war."

On the other hand the Mobile *Register*[52] of September 12 declared that the duty of the convention "is to save the financial honor and credit of the State, in the declaration by this organic body of the people, that Alabama will not tolerate any act that squints at repudiation of her war debt—honor and honesty alike command us to ignore neither the claims of our crippled veterans nor of our just creditors no matter about the cost. The integrity of a state is beyond all price." Northern newspapers declared that the South would have all it could do to pay its share of the national war debt. The Mobile *Register* replied that "if we are to pay for the powder and ball that was bought to shoot us, we really think it quite reasonable that we should settle for that which we used in defending ourselves. No matter what else we have got to pay, we must pay our honest debts, or pass through the world as sharpers, rogues and swindlers."[53] The Montgomery *Advertiser* of September 26 said that "when the convention acts it generally does so after mature deliberation, and we believe it will do nothing in relation to the debts due by the state that will tarnish her fair name."

---

[49] *Ibid.*

[50] Coulter, *The South During Reconstruction,* 35, declares that the repudiation of the war debt "would work a social and economic revolution, by bringing about the destruction of the Southern upper class who held this debt." In Alabama, this upper class was concentrated in Mobile and the Black Belt.

[51] The bonded war debt of Alabama amounted to $13,094,732.95. Ralph B. Draughon, "A History of Alabama Bond Issues," 8 (unpublished Master's thesis, Alabama Polytechnic Institute).

[52] Much of the state bonded war debt was held in Mobile. Fleming, *op. cit.,* 34. Speculators bought up Confederate and state bonds and aided in the movement to prevent repudiation. Coulter, *The South During Reconstruction,* 35.

Judging from the meager reports in newspapers, arguments in the convention on the state war debt followed closely the views expressed in the press. The majority realized that repudiation was a part of the price of restoration. All those worth $20,000 were excluded from voting for or serving in the convention by the President's proclamation, except a very few who had secured personal pardons. The exclusion of this class no doubt gave the convention more of a debtor than a creditor point of view and made repudiation of the war debt easier. However, there was no effort in the convention to repudiate private debts made during the war or the civil debt of Alabama.[54] John Archie Elmore, chairman of the committee on the state debt, reported an ordinance on September 28 which provided that "all debts created by the State of Alabama in aid of the late war directly or indirectly, are hereby declared void."[55] The ordinance forbade the legislature to assume, or provide for the payment of, any part of the debt. The Huntsville *Advocate* declared this latter prohibition necessary, otherwise "attempts will be made at every succeeding legislature to have the debt assumed by the state."[56]

Delegates from North Alabama argued that all unsuccessful revolutionary governments had to repudiate their debts and that creditors of Alabama's war government knew that they would lose their investment in case of its defeat.[57] However, most of the delegates who favored repudiation simply stated that repudiation was necessary for restoration; the issue had been settled by the outcome of the war even as had secession and slavery.

Delegates who argued that the state war debt must be paid declared there was a difference between the state debt and the Confederate debt.[58] The Confederate government no longer existed and it would not need future credit. The state government existed and the economic reconstruction of the state depended on its credit. The credit of the state must be preserved. The people of the state would be further impoverished if the debt owed to thousands of small investors were repudiated.[59]

---

[53] Mobile *Register,* September 28, 1865.

[54] The Texas convention repudiated the civil debt of Texas as well as the war debt. Coulter, *The South During Reconstruction,* 35.

[55] Montgomery *Advertiser,* September 29, 1865.

[56] Huntsville *Advocate,* August 17, 1865.

[57] Montgomery *Advertiser,* September 25, 26, 1865.

[58] *Ibid.,* September 26, 1865.

A correspondent of the New York *World* wrote the following about the ordinance to repudiate the state debt:

> It was violently attacked by several members, prominent among whom was the Honorable James S. Clark of Lawrence.[60] Those who spoke and voted in favor of maintaining the state debts of the past four years should not be judged too harshly. They argue with great force, that a great part of this debt was incurred to support the machinery of the state government, which, however rebellious it was, was the only one the people had, and stood alone between them and anarchy. It would scarcely be denied that society must have some government in order to secure protection to life and property. All this could not be done without money. Then, too, a great part of that debt ($2,000,000) was created for the purpose of supporting the widows and orphans of the soldiers, and indigent families of those who were in the field. To obtain the funds necessary to that object, the state freely and voluntarily invited all widows, guardians of minors, and other persons having only a small capital to maintain themselves, to come forward and invest that capital. . . . To sweep away now all these bonds and all these obligations to the widow and orphans would be, indeed, a great hardship.[61]

After long and bitter debate the convention voted 69 to 19 to repudiate the state war debt.[62] Most of the delegates voting against repudiation were from South Alabama, and none of the four delegates from Mobile County where a large part of the debt was held voted for repudiation. The Eufaula *Daily News* called the vote the "burial of our state credit, so unceremoniously murdered by the convention."[63] The editor stated that the banks of the state were perhaps the chief losers. At the beginning of the war they were compelled by the legislature to turn over the coin in their vaults to the state treasurer and to take in place thereof state bonds. Now these bonds were worthless and would never be redeemed.

The convention passed many ordinances of a legislative nature. An election ordinance provided for the election of county, municipal, state, and federal officials.[64] Some delegates contended that the convention did not have power to provide for the election of members of Congress,[65] and the convention authorized the provisional governor to provide for their election by proclamation.[66] Separate dates were set for the election of the state judiciary, municipal, and other state officials, lest one election day bring further disorder and confusion.[67] The election of judges at a different time from other officials followed pre-war precedent.

---

[59] New York *Times,* October 31, 1865.

[60] Although Clark was from North Alabama, which would lose less by repudiation than South Alabama, he was apparently concerned with the effect repudiation would have on the state's future credit and with the losses sustained by schools, churches, widows, orphans, and other indigent classes.

[61] New York *World,* September 30, 1865.

[62] *Journal of the Convention of 1865,* 95; Montgomery *Advertiser,* September 29, 1865. A last effort was made to exempt funds from repudiation belonging to deceased persons and minors, but this amendment was tabled by a vote of 51 to 44. New York *World,* September 30, 1865.

[63] Quoted in Montgomery *Advertiser,* October 8, 1865.

[64] J. W. Shepherd (ed.), *Constitution and Ordinances of 1865,* 59. Hereinafter cited as *Constitution and Ordinances of 1865.*

The convention adopted an ordinance providing for the payment of the bonded debt of the state made before January 11, 1861.[68] The provisional governor was authorized to sell bonds to meet the interest on this debt, two installments of which, amounting to $63,000, were already past due. An ordinance to facilitate the adjustment of private debt made during the war was adopted.[69] Because of the great fluctuation in the value of Confederate money during the war, adjustments would have to be made as debts were now to be paid in United States currency. The North Carolina convention fixed the relative rate of specie and Confederate notes at different periods during the war but the Alabama convention left this decision to juries, providing however for parol testimony in such cases.[70] Ordinances requiring civil officers to continue to act as agents of the Freedmen's Bureau,[71] authorizing the provisional governor to call out the militia "in view of the lawlessness and violence that prevail in many counties of the state,"[72] and asking the President of the United States to remove all military forces from the state except the garrison on the coast received the approval of the convention.[73] The state was divided into six congressional districts,[74] instead of the seven which the state had before the Civil War. The reduction in the number of districts was made because the abolition of slavery had abolished the federal ratio. Although it was now logical that in apportioning representation, the Negro would count even as the whites, the convention did not wish the North to use the argument that since the Negro was used in apportioning representation in Congress he should be allowed to vote.[75] Judging from the debate in the convention, many members feared that Negro suffrage would soon be demanded by northern radicals.

Like that of 1861, the convention of 1865 made changes in the state constitution. A committee of nine was appointed on the constitution, of which William Peter Webb of Greene County was made chairman.[76] This committee did not make a report on the whole constitution, but made favorable or unfavorable reports on amendments proposed from the floor. Amendments to the Constitution of 1819 adopted by the secession convention were null and void but they were reconsidered and most of them readopted. All major changes made in the Constitution in 1861 except those in regard to secession and slavery were readopted and other changes were made.[77] The preamble of the Constitution of 1861, which contained secession doctrine, was changed so as to read almost like the preamble to the Constitution of the United States.

---

[65] New York *Times,* September 30, 1865.

[66] *Constitution and Ordinances of 1865,* 65.

[67] The Montgomery *Advertiser,* September 30, 1865, said that "the confusion that would have ensued from such a multiplicity of candidates would have been similar to that created by a variety of tongues at Babel. . . . It is particular a matter for gratulation that the day for the election of judicial officers is entirely separate and apart from any other."

[68] *Constitution and Ordinances of 1865,* 69.

[69] *Ibid.,* 67.

[70] *Ibid.*

[71] *Ibid.,* 60.

[72] *Ibid.,* 44.

[73] *Ibid.,* 70.

[74] *Ibid.,* 46.

[75] The fact that the freeing of the Negro would probably give the South additional representation in Congress was worrying Northern Radicals. But at the time the convention acted, the Thirteenth Amendment had not been ratified.

Although the new declaration of rights contained positive provisions against slavery, the article became a controversial one because of the new body of freedmen. Fearing Negro participation in the government, the convention struck from the declaration of rights of former Alabama constitutions the proviso "that all freemen, when they form a social compact, are equal in rights."[78] An effort to strike out the clause giving every citizen "the right to bear arms in defense of himself and state" failed of passage.[79] Some delegates feared this clause might be used to arm the Negroes. Others wished to strike from the bill of rights the provision that "the right of trial by jury shall remain inviolate," lest the clause be used to grant the Negro the right to sit on juries.[80] However, the right of trial by jury was too fundamental to American constitutional law to be omitted; the committee reported adversely and no change was made.[81] Because of fear of the Negro, the convention provided that the legislature might dispense with grand jury and petit jury and give all cases concerning "petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors," to the justice of the peace courts.[82] The new constitution was also the first in Alabama's history to contain clauses providing for conscientious objectors in war time.[83]

The convention readopted with little debate all the changes made in the legislative article by the convention of 1861. These included biennial elections and annual sessions of the legislature limited to thirty days, the prohibition against special or local legislation, the limitation on the legislature as to the making of debt, the provision that if a bank suspended specie payments its charter was forfeited unless the next legislature sanctioned the suspension by a two-thirds vote, and the elimination of the legislature's part in the granting of divorces. The thirty day limit on sessions of the legislature encountered considerable opposition, but the opponents of that measure were defeated.[84] The convention of 1865 placed an absolute prohibition in the constitution for the first time against the legislature, which still had the appointive power, appointing its own members to office.[85] Additional provisions were adopted in an effort to prevent local, special and "loosely framed" legislation.[86]

---

[76] *Journal of the Convention of 1865,* 20.

[77] All references to and provisions in regard to slavery and secession were striken from the constitution.

[78] *Journal of the Convention of 1865,* 35, 48.

[79] *Ibid.,* 33-34, 48.

[80] *Ibid.,* 34.

[81] *Ibid.,* 70.

[82] *Ibid.,* 35.

[83] Contitution of 1865, Article I, Section 28.

The bitterest fight that occurred in framing the legislative article in 1865 was on the matter of apportionment of representation in the state legislature. The "white basis" of apportioning representation had always existed in Alabama, but ordinances were introduced providing for apportionment on "inhabitants" and on "white persons plus one half of all other persons."[87] Since the Negro was now free, the Black Belt wanted to use the Negroes to give that area increased representation in the legislature, although few Black Belt leaders at this time had any idea of using the Negro's voting power. North Alabama delegates contended that if the Negro were used as a basis of representation in the state legislature, this would furnish an argument to the Radicals of the North for the enfranchisement of the freedmen. The Radicals would claim that "we represent the freedmen but will not allow him the right to vote."[88] An article in the Huntsville *Advocate* of September 28, 1865, declared that the ordinance to count all inhabitants "will ruin the white counties of north Alabama. . . . The middle belt of counties in the state with their colored population will have a majority of representatives. In a word, Marengo, with her 1,000 white voters will have more power in our legislature than the counties of DeKalb, Marshall, and Blount with their white voting population of 4,500 voters. We ask you, will the free white voters of north Alabama, and of the wire-grass counties bordering on Florida, submit to such a law?" With characteristic vigor, the press and delegates from North Alabama proclaimed that "this is a white man's government and a white man's state." In an editorial the Huntsville *Advocate* said:

> [If this ordinance] . . . proposes by this change in the state constitution to give to the counties which have large numbers of colored inhabitants the benefit of them at the expense of the whites in the other counties, we are utterly opposed to it. If it is intended in enumerating such colored inhabitants to give them representation and votes, we are opposed to it. This is a white man's government and a white man's state and the counties must have representation according to their white inhabitants. We are opposed to any

---

[84] *Journal of the Convention of 1865,* 69.

[85] *Constitution and Ordinances of 1865,* 51.

[86] *Journal of the Convention of 1865,* 85; *Constitution and Ordinances of 1865,* 85.

[87] *Journal of the Convention of 1865,* 32, 67.

[88] Montgomery *Advertiser,* September 27, 1865.

change at this time in our state constitution except such change as may be necessary to get the state in the union again. The proposed change would transport to Alabama one of the worst features of the constitution of South Carolina.[89]

A North Alabama delegate introduced an ordinance providing for apportionment on the basis of the "white inhabitants," which was adopted by a vote of 59 to 30.[90] Delegates voting against the ordinance were mostly from the Black Belt and all from counties which had a large Negro population. The "white" counties had defeated the "black" counties in the first test of strength after the Civil War. However, this was to mean very little as the Johnson government was soon to be replaced by one set up under Congressional Reconstruction, which not only would count the Negro in the basis of representation, but turn the government over to him and his allies.

The convention by unanimous vote wrote a section into the new legislative article making it the duty of the next session of the legislature to "enact laws prohibiting the intermarriage of white persons with Negroes, or with persons of mixed blood, declaring such marriages null and void *ab initio,* and making the parties to such marriages subject to criminal prosecutions."[91]

The executive article of the Constitution of 1819 was re-adopted. Persistent efforts to increase the tenure of the governor from two to four years and to take appointive power from the legislature and give it to the governor failed of passage.[92] An ordinance, which would give the governor power to appoint judges of the circuit court, chancellors, and judges of the supreme court with the advice and consent of the Senate also failed to pass.[93]

The justices of the peace were given jurisdiction over all civil cases in which not more than $100.00 was involved.[94] This was the only important change in the judiciary article. This alteration would greatly increase the number of civil cases tried by the justices, as the previous amount had been $50.00.[95] The convention had already increased the power of justices over criminal cases by amendment of the bill of rights.

---

[89] Huntsville *Advocate,* September 28, 1865.

[90] *Journal of the Convention of 1865,* 68. For reapportionment purposes, a census was to be taken in the years 1866, 1875, and every ten years thereafter. The convention also abolished an archaic section in Alabama's constitution since 1819 allowing towns and cities separate representation in the legislature. No town or city had ever been given separate representation in Alabama. *Ibid.,* 40, 69.

[91] *Ibid.,* 101; Constitution of 1865, Article IV, Section 31.

[92] *Journal of the Convention,* 32, 33, 70, 71.

[93] *Ibid.,* 62. Ordinances lengthening the term of the sheriff and allowing him to succeed himself also failed to pass. See *ibid.,* 63, 70, 71.

[94] *Constitution and Ordinances of 1865,* 44.

[95] See Chapters V and VI for accounts of former attempts to increase the power of justices of the peace in civil cases.

The Montgomery *Advertiser* in an editorial declared that the increased power given the justice of the peace was necessary because of the large number of cases that would result from the recent emancipation of the Negro and the unsettled state of affairs.[96] The editor stated that ‘it is good policy to have a way of disposing of minor offenses without the intervention of an indictment by a grand jury.”[97] Also, the increased power given the justice of the peace would make the office “of sufficient interest and character to induce men of ability to seek the position, and the people will see the importance of electing such to protect their own interest.”[98]

Ordinances giving the people the right to elect the attorney general and solicitors were defeated by the convention.[99] The opponents of increased participation of the people in the election of their officials argued that the convention should make no changes of a controversial nature. The convention was a “restoration” convention; it should make only necessary changes in the constitution.[100]

A Negro mass meeting in Mobile petitioned the convention through the Freedmen’s Bureau asking for “the right of suffrage and other rights and immunities of citizenship.” The convention tabled the petition by a unanimous vote without discussion.[101]

Although defeated, an ordinance requiring all foreigners to be residents of the United States and the state of Alabama for ten years before they should be allowed to vote became a bitter issue.[102] At this time Alabama and other Southern states were seeking white immigrants in an effort to offset the large number of freedmen and furnish labor for agriculture and industry.[103] Delegates in the convention and the press of the state attacked the ordinance on the ground that it would discourage immigration. The Montgomery *Advertiser* declared that “it is only by the increase of our laboring population from the industrious, intelligent and enterprising of other sections and countries that we of this generation can hope to see our rich mineral region developed, factories built up, our vast abandoned fields inhabited and cultivated, and railroads constructed, which shall open every portion of the state, binding the people together, as with iron bands, and furnishing an outlet for the products of our labor, intelligence and capital to other portions of the world."[104] A contributed article in the Montgomery *Advertiser* said:

---

[96] Montgomery *Advertiser,* September 24, 1865.

[97] *Ibid.*

[98] *Ibid.,* September 20, 1865.

[99] *Journal of the Convention,* 34, 79, 85; Montgomery *Advertiser,* September 19, 21, 1865.

[100] Montgomery *Advertiser,* September 16, 1865.

[101] *Journal of the Convention of 1865,* 79; Montgomery *Advertiser,* September 30, 1865. The press of the state and delegates to the convention many times expressed their fear of Negro suffrage. The Montgomery *Advertiser,* September 30, 1865, declared that “the sympathy which the black skin is exciting [in the North] in behalf of the man who wears it is leading evil thinking men to open a path to the halls of legislation for them.”

[102] *Journal of the Convention of 1865,* 42, 85.

[103] Coulter, *The South During Reconstruction,* 104.

> The inventive, intelligent, educated, white man is the best auxiliary to enable us to contend successfully against the threatened domination of the freed black man. This is a queer time to present an ordinance precluding a foreigner, however patriotic and qualified, from exercising the elective franchise for ten or fifteen years, when the Republican party North is insisting that our liberated Negroes shall vote at all our elections, as a condition precedent to our restoration to our rights in the union. . . . We have no longer the question of slavery to contend for, upon which nearly all foreigners were unsound. . . . It is no stretch of the imagination to predict that the absence of slavery will lead the southern states to a policy the very reverse of what they have hitherto thought wise, as regards foreigners. . . . We may as well reach the conclusion at once that it will be by the immigration of the white man, his capital, his science, improved style of labor, and industry that the fortunes of Alabama will be restored, if ever, and not by the forced labor of the emancipated slave. . . . We want no Chinese wall around us to hold the Negroes, or prevent the white man from entering the state.[105]

Whether to submit the new constitution to a vote of the people became an issue in the convention and the press. Some advocated submitting all amendments except those concerning slavery and secession. In an editorial the New York *Times* asserted that even those questions should be submitted to the people because "the moral effect of an overwhelming popular majority, in each and every southern state, declaring that the secession ordinances were null and void, and that slavery shall never more exist would be exceedingly valuable."[106] The editorial stated that submission was all the more necessary because the conventions had been called by a military governor and conditions were such that in many counties "a mere handful of votes were cast" for members of the convention. It further declared that the action of the convention of 1861 in not submitting its work to the people was "the very height of usurpation" and "we consider that republican principle, anti-rebel consistency, and wise expediency, all urge" the convention of 1865 to submit its work to the people. Charles Christopher Sheets[107] of North Alabama introduced an ordinance providing for the submission of all amendments to the people except those that referred to the emancipation of the slaves.[108] But opponents of submission argued that there was not time for submission; that the people had full confidence in the convention and its acts, and were prepared to acquiesce in all the ordinances it should pass.[109] Advocates of submission argued that submission was customary, that the convention of 1865 should not repeat the mistake of the convention of 1861, which had "usurped" power and taken Alabama out of the union without submission of that most important question.[110] North Alabama delegates argued that "if the ordinance of secession had been referred back to the people for ratification or rejection, it would have been rejected."[111] Some declared that they had pledged themselves in the election for the convention "to submit to the consideration of the people all important acts of the convention."[112] But the convention refused and adopted the report of the committee against submission by a vote of 61 to 25.[113] Most of the twenty-five delegates voting against the report were from North Alabama.

---

[104] Montgomery *Advertiser,* September 27, 1865.

[105] *Ibid.*

[106] New York *Times,* September 25, 1865.

[107] Sheets was an ardent opponent of secession in 1861. He was expelled from the legislature in 1862 for alleged disloyalty to the Confederate government. Later, he was tried and imprisoned for treason.

[108] *Journal of the Convention of 1865,* 34.

A proviso was placed in the constitution providing that no future constitutional convention could be called without a popular vote being taken. This was a concession to North Alabama, which still insisted that the calling of a convention in 1860-1861 should have received a popular majority.[114]

The convention adjourned on September 30, having been in session since September 12.[115] During this convention North Alabama regained some of the leadership it lost to South Alabama before the Civil War. North Alabama had contributed most of the cooperationists in the convention of 1861, and had given early and consistent opposition to the war. Now that the work of the convention of 1861 was discredited as a result of the war, it was but natural that that section of the state should regain leadership. On most of the controversial issues in which there was a north-south division, North Alabama won. That section, with the aid of some South Alabama votes, won on apportionment, submission of the question of any convention in the future to the people, and repudiation of the war debt.[116] It lost on the less important issues of submission of the Constitution of 1865 to the people and a stronger denunciation of the secession ordinance. If the Johnson government in

---

[109] *Ibid.*, 70, 74; New York *Times,* October 10, 1865.

[110] New York *Times,* October 10, 1865.

[111] *Ibid.*

[112] *Ibid.*

[113] *Journal of the Convention of 1865,* 75.

[114] *Ibid.*, 41, 70. Provision for even the legislature calling a convention had been in no former Alabama constitution; it was considered an inherent right.

[115] Because of the uncertain situation, it passed a resolution providing that the convention might be called back into session by its president any time prior to September 1, 1866.

[116] It is true, also, that repudiation of the war debt was part of the price of restoration, which South Alabama would have to support like the abolition of slavery and repeal of the secession ordinance.

Alabama had survived, the apportionment in the legislature and the absence of Negro suffrage would have given the white counties control of Alabama politics.

However, even North Alabama delegates were not in favor of further revolutionary changes in Alabama's fundamental law. No remarkable progress had been made in constitutional development. Few foresaw the full import of the new order which was taking shape in the minds of northern extremists. Alabamians, neither north nor south, considered that the loss of the war meant accepting a revolution.

CHAPTER VIII

THE RECONSTRUCTION CONVENTION AND THE SUFFRAGE

In December, 1865, Congress refused to seat representatives and senators from Alabama elected under the Constitution of 1865. The Johnson Plan of Reconstruction, under which the Constitution of 1865 had been written, was not replaced by the Congressional Plan, however, until the Reconstruction Act of March 2, 1867. This act invalidated Johnson's plan and all that had been accomplished under it. The act made Alabama a part of the Third Military District and provided that the civil government organized under the Constitution of 1865 might remain as a provisional government unless altered or abolished by the military.[1] Under this and the supplementary act of March 23, 1867, only Negroes and whites who could take the test oath[2] could register and vote. The military commander was to register those eligible in each state and call for a vote on the question of a constitutional convention and the election of delegates. General John Pope, who had been placed over the Third Military District, issued orders creating boards of registration, which registered those eligible to vote in Alabama during the summer of 1867. He placed William H. Smith of Randolph County,[3] long a resident of Alabama who had served in the Federal Army, in charge of registration.[4] The state was divided into forty-four districts, and two whites and one Negro were appointed as a board of registrars in each district.[5] Since members of the boards had to take the "iron clad" oath,[6] many of the white registrars were necessarily Carpetbaggers.

---

[1] The supplementary act of July 19, 1867, made this fact even more explicit.

[2] The oath was not the simple oath of loyalty to the United States required by Johnson's plan. One had to swear that he had never been disfranchised for participation in the rebellion and had never been a state or federal official who had taken an oath of loyalty to the United States and later engaged in the rebellion. The latter qualification was incorporated in the Fourteenth Amendment for office-holders but not for voters.

[3] Smith, a Georgian by birth, represented Randolph County in the legislature in 1857-1858. He voted for Douglas in 1860 and opposed secession in 1861, arguing that slavery could be saved only in the Union. In 1862 he was threatened with arrest by Confederate authorities and escaped to Union lines. In 1863, he helped organize the first regiment of Union cavalry from Alabama refugees. In 1865, Parsons was appointed over Smith as provisional governor, because he was acceptable to the Montgomery delegation of loyal men that had gone to Washington as well as to the North Alabama delegation, the former of which opposed Smith. Smith, an ardent member of the Loyal League, was elected the first Republican governor of the state in 1868. The *Daily State Sentinel,* a Radical newspaper, published at Montgomery and edited by John Hardy, ran long biographical sketches of prominent Republicans in Alabama, including many in the Convention of 1867. Most likely the sketches were written by John Hardy, but some of them may have been written by M. P. Blue, who was attached to the staff of the *Sentinel.* Both Hardy and Blue were Alabama historians. A sketch of Smith is in the issue of June 28, 1867.

Some Democratic newspapers, believing that by cooperation with the Radicals Alabama could best recover from the political and economic disasters of the war, urged all who could to register and vote.[7] In numerous editorials the Montgomery *Advertiser* urged this policy, warning that conditions in Alabama would become as bad as those in Tennessee under "Parson" William Gannaway Brownlow, if the people of Alabama refused to cooperate with the Radicals.[8] However, the *Weekly Advertiser* in one of its editorials said that "should the convention decree universal suffrage with white disfranchisement, the Rubicon shall have been passed."[9] A typical editorial, appearing in the *Weekly Advertiser* of June 25, 1867, reads as follows:

> And what availeth it to vote down a convention? To do so, is to close the door against any hope of reconstruction, and to turn over everything to a Congress that has unlimited sway for two years to come. It is certainly far preferable to organize a State government when only a small proportion of the Whites are disfranchised, than to refuse and then wait and have to do it when not one in fifty of the respectable White people of Alabama will have a voice in the matter. . . . Countrymen, avoid if possible the fate of Tennessee. Her deplorable condition is due alone to the complete disfranchisement of those who were true to the Confederacy.

On August 20, 1867, the *Weekly Advertiser* declared:

> We have honestly and earnestly advocated, and we shall honestly and earnestly advocate, a restoration of Alabama to the Union under the pending

---

[4] Montgomery *Weekly Advertiser,* May 28, 1867. Thirteen of the delegates elected to the convention were registrars. They registered voters, conducted the election, and signed their own certificates of election. See Selma *Times and Messenger,* February 28, 1868, for their names.

[5] Montgomery *Weekly Advertiser,* May 28, 1867.

[6] The "iron clad" oath in which one had to swear that he had never willingly aided the Confederacy was required of all Federal officials. Registrars would be Federal officials until Alabama was readmitted to the Union.

[7] The Montgomery *Weekly Advertiser,* May 28, 1867, contains a list of newspapers supporting that point of view. Some newspapers argued that if Alabama and other ex-Confederate states had ratified the Fourteenth Amendment in 1866 it would have placated the Radicals; others that it would not. Only Tennessee ratified the amendment.

[8] *Ibid.,* June 25, July 23, October 1, 1867. For a description of the conditions in Tennessee referred to, see Coulter, *The South During Reconstruction,* 43, 264; E. Merton Coulter, *William G. Brownlow, Fighting Parson of the Southern Highlands,* 101. Brownlow had brought about the almost complete disfranchisement of all those who gave any support to the Confederacy and had instituted a "reign of terror" through his control of the state militia.

[9] Montgomery *Weekly Advertiser,* November 12, 1867.

plan. Every branch of business is suffering—every pursuit in life is languishing—from the political uncertainty which hangs over us. This will continue to be the case until we have a definite and satisfactory solution of the great problem of reconstruction.

At this early stage, however, there were dissident voices. John Forsyth, editor of the Mobile *Register,* declared that the Montgomery *Advertiser* was too ardent in its support of a call for a constitutional convention to replace the Constitution of 1865.[10] Forsyth foresaw the full import of the Radical program and favored waging a bitter attack on it in order to unite conservative whites against Negro and alien rule. The Montgomery *Advertiser* was soon to come to the same conclusion, but at this time replied that Forsyth regarded "the record of himself and his house"[11] as more important than the welfare of Alabama.[12] The Selma *Weekly Messenger* agreed with the Mobile *Register* and protested that "it will not be a convention of the people of Alabama. . . . It can make no constitution under which any white man can live. The acts under which it is to convene require it to clothe every male Negro over twenty-one years of age with the privilege of the suffrage—and when that is done the sum of all evils to the community is embodied in its work."[13] Some newspapers expressed the hope that the Conservatives might control the convention. If those who could would register and vote for delegates, the convention would be controlled by "the Conservative Union men of Alabama" rather than "the Radical rule or ruin party in this State," the Selma *Times* declared.[14] The Montgomery *Daily State Sentinel,* the Mobile *Nationalist,* the Huntsville *Advocate,* all Radical newspapers, were of course zealous supporters of a constitutional convention and the whole Congressional plan of Reconstruction.[15]

The election on the question of holding a constitutional convention and the selection of delegates was held October 1-5, 1867.[16] The number of delegates allotted election districts in the convention was based on the number of registered voters, and since more Negroes registered than whites, the "black" counties were given more delegates in proportion to total population than the "white" counties.[17] Any person eligible to register and vote was eligible to become a delegate to the convention. Some of the delegates nominated by the Radical Republican party had never been in the county they represented.[18] Prior to the election, 104,518 Negroes and 61,295 whites registered.[19] And 90,283, a majority of the registered voters as required by the Reconstruction acts, voted for a convention and for delegates; 71,730 were Negro and 18,553 white voters. Only 5,583 white votes were cast against a convention.[20] There were numerous charges of fraud and corruption in the election. The Conservatives claimed the Radicals gathered the Negroes together and drove them to the polls.[21] Numbers of Negroes in Montgomery County called for "forty acres and a mule" after they had "put the thing in the box," declared the Montgomery *Mail* of October 10, 1867.

---

[10] *Ibid.,* July 2, 1867, quoting the Mobile *Register.*

[11] Forsyth's father (also John Forsyth) had been governor of Georgia and Secretary of State under Andrew Jackson. The son, John Forsyth, had, as editor of the Mobile *Register,* supported Douglas for president in 1860. However, after Lincoln's election he became a secessionist and was appointed a peace commissioner to Washington by the Confederate government in 1861. Governor Parsons appointed him mayor of Mobile under the provisional government. By 1867, Forsyth foresaw the full import of Radical Reconstruction and very early became one of the most important leaders of the opposition in Alabama.

[12] Montgomery *Weekly Advertiser,* July 2, 1867. The *Advertiser* at this time received all the official printing of the provisional state government. John Forsyth's Mobile *Register* and Joseph Hodgson's Montgomery *Mail* early assumed a very bitter attitude toward the Congressional Reconstruction policy and rallied the whites of Alabama to oppose the convention and all the Radicals stood for.

[13] Selma *Weekly Messenger,* November 9, 1867.

[14] Montgomery *Weekly Advertiser,* July 30, 1867, quoting the Selma *Times.*

[15] These newspapers were published by John Hardy, Albert Griffin, and William Bibb Figures, respectively. Hardy and Figures were Scalawags, who had published newspapers in Alabama before or during the Civil War; Griffin, of New York and Ohio, edited the "influential organ of the colored people of Mobile." Montgomery *Daily State Sentinel,* July 8, 11, 1867.

---

[16] Montgomery *Weekly Advertiser,* September 3, 1867; Selma *Weekly Messenger,* November 9, 1867. The election was originally scheduled for October 1 and 2, but General Pope extended the time in order to give the Radicals a chance to get out the full vote.

[17] The supplementary Reconstruction Act of March 23, 1867, provided that representation among the several counties be apportioned according to "the ratio of voters registered." Walter Lynwood Fleming, *Documentary History of Reconstruction,* I, 408. The Montgomery *Daily State Sentinel,* July 13, 1867, gave an approximate apportionment and declared that twenty counties with a large majority of Negro votes would elect forty-eight of the one-hundred delegates. The Montgomery *Mail,* July 20, 1867, said the "hill country" was opposed to the convention for this reason.

[18] Selma *Daily Messenger,* November 27, 1867. For instance, M. D. Brainard represented Monroe but resided in Montgomery and Richard M. Johnson represented Henry but resided in Montgomery. The Radical press claimed these and other cases were necessary in order to secure good delegates; and that they were not illegal, since a delegate to a constitutional convention did not have to reside in the county he represented. Montgomery *Daily State Sentinel,* July 17, 1867.

[19] All the registration and election figures given in this paragraph are taken from Walter Lynwood Fleming, *Civil War and Reconstruction in Alabama,* 491.

[20] Registered whites and Negroes who failed to vote numbered 37,159 and 32,788 respectively. Only about one-third of the registered white voters had voted and although the Loyal League brought great pressure on the Negroes, nearly a third of the Negroes failed to vote. This was typical of other Southern states. Coulter, *The South During Reconstruction,* 133.

[21] The correspondent of the New York *Herald,* November 10, 1867, wrote: "The Negroes were everywhere driven to the polls by the chiefs of the Union League councils. The day before election, Radical agents travelled through Montgomery County and summoned the blacks to come to the city and vote, telling them that General Swayne had ordered them to do so, and would punish them if they did not. On the afternoon of the day before election, thousands of Negroes marched into Montgomery in regularly organized regiments, each man bearing arms; and at night they camped around the city like a besieging army. The danger of disturbance was so great that the military authorities ordered them to be disarmed. Ten per cent of the Negroes who voted could not now tell, and indeed never knew the name on the ballot which they deposited in the box; they acted simply in obediance to the instructions of the Bureau agents; and without the faintest glimmering of an idea of what they were doing."

Under instructions from General Pope, the convention met in Montgomery on November 5, 1867. Accounts vary as to its exact composition, but are in sufficient agreement to indicate its general nature. According to the Montgomery *Weekly Advertiser,* all the delegates elected were "identified with the Republican Party" except two.[22] The correspondent of the New York *Times* wrote that the convention was composed of "sixteen Negro delegates . . . thirty northern men and Bureau officials . . . one Conservative . . . and the rest 'moderate men' " or Scalawags.[23] As a rule the latter were less bitter and vindictive in their speeches and policies than the Carpetbaggers or Negroes who followed the leadership of the Carpetbaggers. The editor of the Selma *Times* said that "among the Whites, who control the convention, there is a majority of men of southern birth. We are loath to believe that they will be willing to impose any disability upon their fellow citizens."[24] The editorial further added that there were both "good men and demagogues in the convention. . . . The large body of the convention is composed of new men—men who heretofore have taken but little, if any, part in political matters." The Selma *Weekly Messenger,* ardent anti-Radical newspaper, recorded that "fifty odd members are old residents of Alabama; the rest are colored and men from the North. . . . Nearly all the delegates are wholly unknown to our people. With few exceptions, none of them have ever before held any position of importance."[25] The Montgomery *Weekly Advertiser* stated that "the Alabama element in it is in the majority, exclusive of Negroes or new residents. It will have some men of ability, who have had legislative experience."[26]

The Montgomery *Daily State Sentinel,* the leading Republican newspaper in the state, declared on October 17, 1867:

> Of the numbers elect there are 96 Republicans and four elected by the secession or rebel influence, and as a matter of course will oppose everything done by the Republicans in the Convention. Of the 96 Republicans; 17 are colored men leaving 79 white Republicans. Of these 79, there are about 28 who have located in the state since the end of the rebellion, and consequently 51 who lived in Alabama previous to the war, about 20 of whom either left voluntarily or were driven from their homes by the rebels during the war. . . .

[22] Montgomery *Weekly Advertiser,* October 7, 1867. The exceptions were James Hart Howard of Crenshaw and G. J. Dykes of Cherokee. Howard had been superintendent of education for Crenshaw County. Although affiliated with the Republican party, James F. Hurst of Coosa, a lawyer, often voted on the same side as the above delegates. The Montgomery *Daily State Sentinel,* January 16, 1868, attributed this to the fact that one of the Negro delegates showed up wearing his lost hat.

[23] New York *Times,* November 6, 1867.

[24] Quoted in Montgomery *Weekly Mail,* November 5, 1867.

[25] Selma *Weekly Messenger,* November 9, 1867.

[26] Montgomery *Weekly Advertiser,* October 22, 1867.

Perhaps the best analysis of the economic, social, and political standing of the convention was made by the correspondent of the New York *Herald*. He wrote:

> I have been at some pains to discover as nearly as possible the amount of property represented by the delegates. . . . Three-fourths of the delegates are men possessed of scarcely any property, and in many cases of no property at all. The Negroes are with one exception penniless, some of them having worked, prior to their election as delegates to the convention at eight dollars a day and mileage, as field hands on cotton plantations at ten dollars a month. The one exception, Gregory, was a free Negro before the war, and has made some money by keeping a cigar store in Mobile.
>
> [The Carpetbaggers] . . . who have settled in the State subsequent to the close of the rebellion . . . are for the most part almost impecunious. The few hundred dollars they had when they came down here they have sunk in buying small parcels of land or in merchandising, and very few of them have increased their substance since, having, like the rest of the inhabitants of the State, prospered well, if in these days of ruin and poverty, they have never wanted for food and clothing. Twelve of this class of men are Bureau agents, but these of course are comparatively rich. Four of them are mechanics working for day wages, while a good many are earning a livelihood in a very mysterious manner by doing nothing at all. . . .
>
> [The Scalawags] . . . consist either of Alabamians, most of whom come from the northern part of the State, or of men from the other Southern States, who have settled here prior to the war. In this class may be included . . . the moderates and rational delegates, all men of any property or social standing in the convention. Certainly all the lawyers, with one or two exceptions, to be found in the convention come from this section of it. Some of these . . . were men of very large fortune before the war, and are still of considerable means, but most of them if they were ever rich have been ruined by the rebellion, and now find themselves destitute of any ready money, or of any prospect of raising any, except by selling their land at something between sixty cents and three or four dollars an acre; while some have never been anything more important financially than small farmers in such of the counties as were too sterile to afford a profitable field of employment for slave labor. From an estimate, which I have made up with some care, I find that there are not thirty men in the convention who are accounted by the people of the counties in which they reside as possessed of more than one thousand dollars; that there are not thirteen who are worth five thousand, and that there are not seven who are worth over ten thousand. The rest are believed to be worth—nothing.
>
> In social standard the convention ranks at about the same standard of value. Montgomery before the war, and even during the war—for it escaped almost entirely the devastation inflicted upon other cities in the South—was the most fashionable city in the State; and yet here nearly all the delegates are unknown, even their names being strange and unfamiliar. . . . Two of them . . . have been recognized as ex-bushwhackers, who deserted first the rebel and then the Union army, and finally carried on war on their own private account, and for their own personal advantage and benefit. . . . There

> may be exceptions, but it is undoubtedy the case that all the men who are reputed to be worthless, alike in pecuniary standing and reputation, cling to the more violent and extreme wing . . . while the men of considerable standing in the State . . . form the non-proscriptive and temperate party in the convention. . . .
>
> Having thus given, as truthfully as possible, and without any, even the slightest, political bias, the social complexion of the convention, I shall proceed to sketch out its political lineaments. First, of course, comes the colored brigade, numbering some sixteen wooly headed delegates. These are all directly under the control of the White leaders. Two of them are influenced by the moderate men, and the remaining fourteen implicitly follow the lead of the "extreme and violent" party chieftains. They are, without any exception, simply automats, to be put in motion, not by their own volition, but by the will of the sentient beings. . . . The Whites in the convention may be divided politically into three classes, which are very nearly of equal strength. There are extreme men, moderate men, and men who fluctuate to whichever side seems to be the strongest and most successful in the State. The extreme men consist of the Bureau officials, all of whom are, of course, interested in preserving the existing system of things, and from a dozen to twenty men, who seem impelled by some inscrutable law of their nature, or because they can only attain to any prominence by their extravagance, to be reckless, violent fanatics. These are headed by Bingham and Griffin. . . . It is remarkable that the Negroes are wholly under the control of this class of men, who have probably gained their support and favor because they have been more lavish and profuse in the promises of future favors than the other side. The moderate men as I have mentioned before, consist nearly entirely of all the men of standing, property, and good fame in the convention. The men who stand between the two factions have heretofore acted with the extreme men, and have rivaled Bingham himself in the wild fervor of their proscriptive harangues.[27]

Unlike other Alabama constitutional conventions, that of 1867 cannot be called a "lawyers' convention." A study of individual members indicates the convention contained twelve lawyers,[28] only two of whom were not Alabamians. Ten or more of the delegates were preachers. Two of the preachers were Negroes; one of whom, when called on to open a session of the convention with prayer, asked the Lord to "bless the Unioners and cuss the rebels."[29] A number of the preachers were attached to the Freedmen's Bureau. Five of the delegates, all Carpetbaggers except one, had been public school teachers. Four had been newspaper men, all of whom were Carpetbaggers. Two or more delegates were doctors. Others were merchants, farmers, day laborers, and ten or more were Freedmen's Bureau officials.[30]

---

[27] New York *Herald,* November 29, 1867. Northern papers showed great interest in the southern reconstruction conventions and had many reporters in the South.

[28] Biographical material is almost nonexistent on the delegates to the Convention of 1867. Later historians considered most of the delegates unimportant either because they were Negroes, transient Carpetbaggers, of low economic status, or belonged to the wrong political party. Thomas M. Owen, *History of Alabama and Dictionary of Alabama Biography* (4 vols., Chicago, 1921), does not even contain a biographical sketch of William H. Smith, first Republican governor of Alabama. Hence, the writer has attempted to collect all biographical material possible from contemporary newspapers in order to secure a better understanding of the nature of the convention.

Some newspapers refer to sixteen and others to seventeen Negroes in the convention, but a study of the individual members shows eighteen Negroes, thirteen from the Black Belt, three from the Tennessee Valley, and two from Mobile. Ovid Gregory,[31] free Negro before the Civil War and the owner of a cigar store in Mobile; James T. Rapier[32] of Lauderdale, mulatto Negro who had been educated in Canada and was now a lawyer; and John Carraway,[33] ex-slave and now assistant editor of the Mobile *Nationalist,* were the most important Negro leaders in the convention.[34] The uneducated Negroes followed the Radical Carpetbag leaders, especially Daniel H. Bingham of New York and Ohio. The correspondent of the New York *Herald* wrote his newspaper that Bingham had acquired a "complete and unbounded influence . . . over the dusky section of the convention, who have come to regard him as their special leader."[35] However, as already indicated, the three Negroes with educational and cultural advantages expressed opinions of their own and proved equal in debate to the best of the whites.

---

[29] John Witherspoon DuBose, *Alabama's Tragic Decade* (edited by James K. Greer), 121. This book consists of articles written by DuBose for the Birmingham *Age-Herald* in the eighteen nineties. DuBose lived through the Reconstruction period in Alabama. Hereinafter cited as DuBose, *Alabama's Tragic Decade.*

[30] According to the Montgomery *Daily State Sentinel,* November 16, 1867, the delegates listed themselves as follows: 16 lawyers, 9 physicians, 46 planters, 4 carpenters, 2 teachers, 3 manufacturers, and one each of the following occupations: clerk, telegraph operator, minister, cashier, tanner, editor, merchant, superintendent of public schools, blacksmith, painter, millwright, cabinet maker, farmer and merchant, assistant chief police, tailor, commission merchant, register in bankruptcy. Although this is somewhat inconsistent with the material given above, it can be explained in that any delegate might have several occupations or professions, anyone of which he might list. It is interesting to note that 46 small farmers in the convention still liked to be called "planters."

[31] Gregory was a Creole with Negro blood and neither he nor his family had ever been slaves. The Conservative press called him a "light mullato Negro." He owned and operated a cigar stand in Mobile. He spoke English, French and Spanish and was apparently well educated. He had traveled widely in Mexico, South America, and much of the United States. Montgomery *Daily State Sentinel,* November 22, 1867.

[32] Rapier, born in 1839, was the youngest of four sons of a wealthy free mulatto Negro plantation family in the Tennessee Valley. The children were educated in the North, James T. Rapier being sent to Canada for a liberal education. As he could not get home because the war came while he was in Canada, he engaged himself as a tutor in the North until Nashville fell, when he followed Federal Armies into the South as a correspondent of a Northern newspaper. He returned to the family plantation near Florence after the war and became one of the most "extensive and successful planters in the Tennessee Valley." Few Negroes did more to secure the "rights of the colored people." He was a "member of the Nashville colored Convention of 1865 and was the author of the 'Address to the White Citizens of Tennessee,' pleading for Negro suffrage, which had no little influence in securing it in that state. . . . Not a few of the rebel scribblers for the press and rebel leaders might envy him his elevation, education, and ability." Montgomery *Daily State Sentinel,* November 25, 1867. See also Horace Mann Bond, *Negro Education in Alabama: A Study in Cotton and Steel,* 17, 26; W. E. B. DuBois, *Black Reconstruction,* 490-491. Rapier represented Alabama in the 43rd Congress (1873-1875).

[33] Carraway was the natural son of a white slave owner and Negro slave mother in North Carolina. At the death of his plantation-owner father, Charles Carraway, the mulatto Carraway family were all set free. John Carraway made his way North, where he became a tailor. But as white tailors in the North objected to

Hilary A. Herbert records that there were thirty-one Carpetbaggers "from Vermont, Connecticut, Massachusetts, Pennsylvania, Maine, New Jersey, New York, Ohio, Canada and Scotland."[36] Most of these, as in the case of the Negro delegates, came from the Black Belt or adjoining counties. A study of twenty-five delegates, who were without doubt Carpetbaggers, discloses that seventeen were from the Black Belt, three from adjoining counties, two from Mobile, and three from North Ala-

---

competition from him, he went to sea. When the war came, he was one of the first to enlist in the 54th Massachusetts division. During the war he composed a song, entitled "Colored Volunteers," which was reputed to be the most popular war song among colored troops during the war. After the war he made his way to Mobile, Alabama, which place he had often visited while at sea. He became an active member of the Republican Party in the state, attending the first Republican State Convention held in Alabama in June, 1867. At the time of the Convention, he was assistant editor of the Negro newspaper, the Mobile *Nationalist.* Montgomery *Daily State Sentinel,* November 27, 1867.

[34] Other Negroes were Thomas Diggs of Barbour, Jordan Hatcher of Dallas, Washington Johnson of Russell, Tom Lee of Perry, and Ben Alexander of Greene, all field hands; James Green of Hale, a family coachman, and Peyton Finley of Montgomery, formerly doorkeeper of the House of Representatives. The others were L. S. Latham, B. F. Royal, Henry Stokes, J. Wright McLeod, Benjamin Inge, Samuel Blandon, Columbus Jones, and Lafayette Robinson. W. L. Fleming, *Civil War and Reconstruction in Alabama,* 519; J. W. DuBose, *Alabama's Tragic Decade,* 117. The Negro delegates are listed in *Alabama Official and Statistical Register* (1903), 125-126. See also DuBois, *Black Reconstruction,* 490.

[35] New York *Herald,* November 8, 1867. The Carpetbaggers dominated the Negroes in other reconstruction conventions. The conventions of South Carolina and Louisiana contained a majority of Negroes. Coulter, *The South During Reconstruction,* 134-135.

[36] Hilary A. Herbert, *Why the Solid South,* 45. The *Daily State Sentinel,* November 16, 1867, declared that the nativity of the members of the convention was as follows: Alabama 21, North Carolina 7, Georgia 11, South Carolina 7, Tennessee 6, Virginia 10, Kentucky 2; from northern states, New York 11, Massachusetts 6, Vermont 3, Pennsylvania 3, Connecticut 2, Maine 2, Ohio 2; and one each from New Jersey, Canada and Scotland. Other newspapers, however, listed some delegates from Iowa and more from Ohio and other mid-western states. No doubt many had lived in more than one Northern state long enough to claim one or both as their habitat. The Montgomery *Advertiser,* October 22, 1867, bitterly denounced the Carpetbag element in the convention, but the Montgomery *Daily State Sentinel,* December 5, 1867, declared that Carpetbaggers were a natural result of the war. They were Northern soldiers who were attracted by the South's climate and resources during the war and had now returned as good and loyal citizens.

bama.[37] With few exceptions, they came from areas with a heavy Negro population and were sent to Montgomery as were the Negro delegates by Negro constituencies. Prominent Carpetbaggers in the convention were Albert Griffin, Andrew J. Applegate, and Robert McConnell Reynolds, all from Ohio; Charles A. Miller and Benjamin W. Norris from Maine; Datus E. Coon from Iowa; John C. Keffer from Pennsylvania; Daniel H. Bingham, Charles W. Buckley and his brother William M. Buckley, George Ely,[38] W. T. Blackford, Benjamin Yordy, and M. D. Brainard, all from New York; John Silsby, S. S. Gardner,[39] and N. D. Stanwood[40] of Massachusetts; Thomas Haughey of Scotland;[41] and Pierce Burton of Vermont.[42] Griffin was editor of the Mobile *Nationalist*, a Radical newspaper; Keffer, chairman of the Radical state executive committee and "known to malignants as the head devil of the Loyal League";[43] Charles W. Buckley,[44] superintendent of education for the Freedmen's Bureau in Alabama. Miller[45] had been clerk of the Maine House of Representatives; Norris,[46] a land agent in Maine; Applegate,[47] a lawyer; Datus E. Coon,[48] a former Iowa newspaper man and brigadier general in the Federal Army; Reynolds, a school teacher who, a Conservative editor said, had been "six months in Alabama and knew all about it."[49] Silsby, Gardner, Yordy, Stanwood, Blackford, Burton, Brainard, Buckley, Miller, and Norris were all Freedmen's Bureau officials.[50]

---

[37] *Alabama Official and Statistical Register* (1903), 125-126.

[38] Ely was a lawyer from New York who served in the federal army and moved to Montgomery, Alabama, in 1866. He was appointed registrar for the county. Montgomery *Daily State Sentinel*, December 6, 1867.

[39] Gardner was a graduate of Bowdoin, Union chaplain of a Negro regiment and Freedmen's Bureau agent, who came to Alabama by way of Louisiana. Montgomery *Daily State Sentinel*, December 5, 1867.

[40] Stanwood was a former cattle drover. James D. Thomas, "The Alabama Constitution of 1867," 33 (unpublished Master's Thesis, Alabama Polytechnic Institute).

[41] Haughey came from Scotland to America at the age of 14; engaged in nail manufacture in New York; came to Alabama in 1841, where he received an education. Later, he was awarded a medical degree by the New Orleans Medical College. He practiced medicine in Elyton, Jefferson County, until the campaigns of 1860-1861, when he took the stump in favor of the Union. He alienated his neighbors, lost his practice, and fled into Union lines at Huntsville in 1862, where he served as a surgeon until the end of the war. *Daily State Sentinel*, November 18, 1867. The Conservative press claimed he was refused a surgeon's commission in the Confederate Army on grounds of inefficiency. Thomas, *op. cit.*, 44.

[42] W. L. Fleming, *Civil War and Reconstruction in Alabama*, 517; J. W. DuBose, *Alabama's Tragic Decade*, 117. The Selma *Weekly Messenger*, November 23, 1867, copied the account written by the correspondent of the New York *World*, which contained something on eighty-four of the one hundred delegates. Much material is also contained in Montgomery *Daily State Sentinel*, October 1-December 31, 1867.

[43] Selma *Weekly Messenger*, November 23, 1867.

[44] Buckley was a native of New York, graduate of Beloit College, Presbyterian divine and chaplain during the war. He was made superintendent of the Freedmen's Bureau in Montgomery after the war and was the first government officer sent to that city charged especially with the interest of the colored people. Montgomery *Daily State Sentinel*, November 23, 1867.

[45] Miller was a college graduate, able lawyer with much legislative experience, and on the staff of the governor of Maine when the war broke. He joined the Union army and came to Montgomery with Federal troops in 1865, where he remained as a Bureau official. He received support for the presidency of the Convention. Montgomery *Daily State Sentinel*, October 31, November 19, 1867; Thomas, *op. cit.*, 33.

Daniel H. Bingham was the most important leader in the convention. A delegate from Limestone, a Tennessee Valley County, he had been in Alabama for a short time before the Civil War and "was driven out of the State early in the war because of his devotion to the Union."[51] During and after the rebellion, he rendered essential services to Alabamians in Washington, D. C.[52] He was the oldest, most vindictive, proscriptive, and bitter delegate in the convention, hating the South with the fervor of Thaddeus Stevens; and like Stevens was tottering on the brink of the grave.[53] The New York *World* correspondent wrote that he was "the oldest man by perhaps fifteen years of any in the convention, and the intensity of his radicalism is entirely coordinate with his lengthened span of life. It is a pitiable sight to behold this ancient with his poor, old, dyed beard and his glazing eye and quivering mouth, rise tremeously in his seat to mumble out the extremest doctrine of his sect."[54] The New York *Herald* correspondent described him as some sixty years of age, almost bald, a repulsive figure, "who by some misfortune has lost the roof of his mouth, which makes his utterances extremely indistinct."[55] The *Daily State Sentinel,* September 24, 1867, declared the

---

[46] The Conservative press charged that John C. Keffer, chairman of the Republican State Committee and Benjamin W. Norris, assistant chairman, were both dishonest. The first, they declared, had cheated an old lady in Montgomery out of his board bill and the latter had to flee from Maine because of dishonesty in the land office there. The charge against Miller was answered in the *Daily State Sentinel,* November 12, 1867. Keffer was almost killed by an assassin at Union Springs, where he had gone to made a Radical speech. *Ibid.,* September 25, October 4, 1867.

[47] Applegate, soon to be elected lieutenant governor of Alabama, was a native of Ohio. He served in the Union army and in 1865 went to Vicksburg, Mississippi to get recruits to be applied on Ohio's quota. After the war he moved to Huntsville, bought a plantation and began the practice of law. *Ibid.,* November 23, 1867.

[48] Coon was subsequently appointed a United States consul in Cuba by President Hayes; still later he was superintendent in charge of enforcing the Chinese Exclusion Act, with an office in San Diego, California. Thomas, *op. cit.,* 37.

[49] Selma *Weekly Messenger,* November 23, 1867.

[50] *Ibid.*

[51] New York *Herald,* November 29, 1867.

[52] Montgomery *Daily State Sentinel,* December 16, 1867.

[53] Bingham died at his home in Limestone on January 10, 1868, before the constitution, which he took a prominent part in writing, could be submitted to the voters. The Negroes of the state, over which he had great influence, mourned his loss in a mass meeting in Montgomery. *Ibid.,* January 10, 20, 1868.

[54] Quoted in Selma *Weekly Messenger,* November 23, 1867.

[55] New York *Herald,* November 29, 1867.

Conservatives hated him "because of his stern and unyielding Republican principles." During the course of the convention Bingham spoke of Southerners as "incarnate fiends," "merciless wretches," and "hell-hounds of secession." Alabama Conservative newspapers replied in kind, referring to him as "old torch and turpentine" Bingham.[56] He led the most extreme faction in the convention and on most important votes controlled a majority.

Most Scalawag delegates were from North Alabama, although some were from the southern part of the state. Unlike the Negroes and Carpetbaggers in the convention, most of them had been elected by white constituencies. Since they constituted slightly more than a majority of the convention, they might have controlled it had they not been divided between the extremists and moderates.

Prominent Scalawags in the convention were Elisha Wolsey Peck, Arthur Bingham (who unlike his Carpetbag brother, D. H. Bingham, had lived in Alabama since 1841), Thomas Monatt Peters,[57] B. F. Saffold,[58] Gustavus Horton,[59] William C. Ewing,[60] G. W. Graves,[61]

---

[56] Montgomery *Weekly Advertiser,* December 10, 1867. The Selma *Weekly Messenger,* November 16, 1867, in an editorial entitled "A Model Alabama Radical," said that "The name of D. H. Bingham of Limestone ("torch and turpentine" Bingham) appears more frequently than any other in the proceedings of the unconstitutional convention. And it is meet that it should be so. We have reason to believe that he possesses in perfection those qualities of heart which are most successful to distinction in the ranks of the Radical organization in Alabama. If there is any redeeming trait in his character or any redeeming fact in his career we have not heard of it. And as he approximates total depravity his claims upon the affections and confidence of his present associates grow and strengthen."

[57] Peters was a lawyer, graduate of the University of Alabama, an old-line Whig in politics, supporter of Douglas in 1860, and bitter opponent of secession in 1861. Prior to the war he had been state representative and senator. Although he lost more than twenty slaves during the war and was frequently hanged in effigy by his neighbors, his house became the center for Union sentiment in his North Alabama Congressional district. He was a man of much culture, a botanist, could read French and Latin, and during the convention of 1867 was most interested in education and penal reform. Montgomery *Daily State Sentinel,* November 21, 1867.

[58] Saffold of Dallas County was the son of Reuben Saffold, former chief justice of the Alabama Supreme Court. He graduated from the University of Alabama and became a lawyer. In 1861, he took to the stump in opposition to secession and preserved his fidelity to the Union throughout the war, although there were few opponents of the war in his Black Belt county. He was one of the first to openly support the Republican party in the state. After the war he became judge of the second judicial district and mayor of Selma. In 1868, he was elected an associate justice of the Alabama Supreme Court. *Ibid.,* December 2, 1867; Thomas, *op. cit.,* 36.

[59] Horton, of Mobile, came to Alabama from Boston, Massachusetts, in 1837. After the Kelley riot in Mobile in 1867, Governor Patton removed John Forsyth and made Horton mayor of Mobile. Horton supported the Union in 1861 and throughout the war. Thomas, *op. cit.,* 30.

[60] Ewing was born in Virginia, very early moved to Georgia, and received a medical education in the North. He practiced several years in Missouri and California before moving back to Georgia in 1855. He was a Democrat, but opposed secession in Georgia in 1861. Because of pressure from his Confederate neighbors, he fled to the hills of North Alabama, which abounded with Union sympathizers.

Early Greathouse, Benjamin L. Wheelan, John Calhoun Meadors, William Skinner, Henry C. Semple, and Joseph H. Speed. Peck, Peters, Saffold, Skinner, Wheelan, and Meadows were lawyers and all except Meadors had been Union men during the war. Skinner strongly "maintained Union principles, being the focus of the anti-Confederate sentiment in his county."[62] Saffold and Peters had gone north into Federal lines. Saffold was now mayor of Selma. Horton had been a cotton broker in Mobile before the war, and was now mayor of the city of Mobile. Greathouse was a Baptist preacher from North Alabama, whose sympathies had been with the North during the war. Although Republicans, Semple and Speed were leaders of about fifteen moderates in the convention. The former, a nephew and former secretary of President John Tyler, had been in the Confederate Army; the latter, a graduate of Hampden-Sydney College in Virginia, was an educator. Other Scalawags named sometimes voted as moderates and sometimes with the Radicals.[63]

He was one of the "original Moulton Leaguers who, in 1865, first organized the Radical party in Alabama." He was one of the most uncompromising members of the convention. Montgomery *Daily State Sentinel,* December 10, 1867.

[61] Graves practiced medicine in Alabama for years before the war, was a Union man in 1861, served as surgeon in the Confederate Army, where he was in charge of hospitals. After the war, he returned to his home in Perry County, took the amnesty oath and joined the Republican party. He favored Negro suffrage, but general amnesty for all whites. *Ibid.,* November 27, 1867.

[62] *Ibid.,* November 30, 1867.

[63] Brief biographical sketches of four other Scalawags in the convention will give a further understanding of the Scalawag delegates. Henry J. Springfield of St. Clair County opposed secession and the war but was impressed into the Confederate service. He escaped behind Union lines in 1863; returned to North Alabama in 1864 and raised a company of United States scouts under orders from General R. S. Granger. He became captain of the company and made raids from 75 to 100 miles inside Alabama, with from 30 to 75 men, capturing guerilla officers and aiding hundreds of loyal men to escape to Union lines. John W. Wilhite, delegate from Winston County was an ex-Whig who voted for Douglas in 1860 and bitterly opposed secession in 1861. In June, 1861, Wilhite was charged with treason and taken prisoner by the Confederate government on account of his loyalty to the Union cause (Winston County had seceded from Alabama). About twelve months later he escaped into Union lines, became a Union soldier, marched with Sherman through Georgia and was mustered out July 19, 1865. As a member of the Alabama legislature in 1866, he voted for the Fourteenth Amendment, which the legislature rejected. J. R. Walker, delegate from Shelby County, lived in Coosa County when the war began. He was a stanch Union man and fled into Union lines in 1862. He was appointed captain in the Union army and "during the remainder of the war was an efficient and successful recruiting officer. He succeeded in carrying 2,700 men across the lines into the Union army; much more than any other man in this state." In 1862, he was "actively engaged in organizing the people on peace propositions. Of course, such a true friend of the Union was the object of the bitterest and most persistent rebel persecution and proscription." Samuel F. Kennemer, a farmer, was born in Marshall County in 1830. A Bell and Everett man in 1860, he bitterly opposed secession in 1861. During the war "he deeply sympathized with the poor men who were driven into the Rebel army under the thumb-screws of Rebel conscript laws. He gave active support and aid to Union men who were fleeing from conscription." In 1863, he raised a company of North

The convention chose Scalawag Elisha Wolsey Peck, president of the convention, defeating Carpetbagger John C. Keffer, chairman of the Radical State Executive Committee, who withdrew at the last minute because of the unlikelihood of his election. Peck, an able and prominent lawyer from Tuscaloosa, had "denounced secession at the first, in the middle, and at the end."[64] Chancery judge of a middle Alabama district before the war, he had never been elected previously to any office. He lacked legislative experience and knew little parliamentary law. However, as the rules of the convention provided that the president appoint all committees and officers, he wielded great appointive power.[65] All of the important offices were given to whites, but as many "delegates had been elected by black votes, it was felt proper that some concessions should be made to the all powerful race."[66] Negroes were made assistant secretaries, doorkeepers, pages, and messengers, all inferior positions.[67]

Committees were appointed on the preamble and the bill of rights, the legislative department, the executive department, the judicial department, the elective franchise, representation, elections, corporations, county and municipal organization, the public debt, education and the school fund, public state institutions, the militia, and the constitution. Articles were referred to the last named committee after adoption for inclusion in the constitution as a whole.[68] Because they were largely adopted with little change, reports of committees were probably more important than in any other convention ever held in Alabama. One and sometimes two Negroes were appointed to all except three of the committees, but no Negro was made chairman of any committee. Carpetbaggers were chairmen of nine and Scalawags of six.[69] Committees generally were well balanced between Carpetbaggers and Scalawags, the important committee on the elective franchise having three Carpetbaggers, three Scalawags, and one Negro. However, the committee on the legislative department consisted of six Scalawags, no Carpetbaggers, and

---

Alabama Union scouts and fought on the Union side during the last two years of the war. *Ibid.*, November 25, 26, 29, December 27, 1867.

[64] *Ibid.*, September 25, 1867.

[65] Peck represented Tuscaloosa County in the convention. He had moved to Alabama from New York in 1825, where he became an old-line Whig in politics and supported the Union throughout his life. Shortly after the war, he joined the Republican Party. Only about 60 years of age in 1867, he was almost an invalid and frequently let other members preside over the convention. In 1868, the Radicals made him Chief Justice of the State. *Ibid.*, September 25, 1867; Thomas, *op. cit.*, 29; Montgomery *Weekly Advertiser*, November 12, 1867; Selma *Weekly Messenger*, November 9, 1867.

[66] New York *Herald*, November 10, 1867.

[67] *Journal of the Convention of 1867*, 5.

[68] *Ibid.*, 8-10.

[69] Peck attempted to placate the Carpetbaggers, having defeated their candidate for the presidency.

one Negro; five Carpetbaggers, one Scalawag, and one Negro constituted the committee on the executive department.[70]

The most important constitutional question before the convention was that of the franchise. The Reconstruction acts determined the electorate until Alabama should be readmitted to the Union, after that the suffrage provisions of the new state constitution.[71] However, since the Reconstruction acts had made Negro suffrage a prerequisite for admission to the Union and had disfranchised certain whites, the real issue in the convention was the disfranchisement of more whites.

Albert Griffin, bitter Radical from Ohio, was chairman of the committee on the elective franchise. Benjamin W. Norris, John C. Keffer, Carpetbaggers; Joseph H. Speed, Benjamin L. Wheelan, Joseph H. Davis, Scalawags; and Thomas Lee, Negro, were also members. On the sixth day of the convention this committee made a majority and minority report. The majority report was signed by Griffin, Norris, Keffer, and Davis, three Carpetbaggers and one Scalawag. The minority report was signed by Speed, Wheelan, and Lee, two Scalawags and one Negro.[72] The majority report was far more proscriptive than the Reconstruction acts, which disfranchised only those who had taken an oath to support the Constitution of the United States and later gave "aid and comfort to the enemies thereof."[73] The minority report provided for universal manhood suffrage with no proscription.

The majority report was composed of three sections.[74] The first attempted to encourage immigration into Alabama by providing that with the exception of certain proscribed classes, every male person twenty-one years of age who had legally declared his intention to become a citizen as well as citizens of the United States, might register and vote. Alabama's previous residence requirement of one year in the state and six months in the county was reduced to six months in the state and three months in the county.[75] The Conservative press argued that the reductions were intended to enable the Carpetbaggers and migratory Negroes to establish residence for voting; the Radicals declared that it was necessary in order to encourage immigration.[76]

---

[70] *Journal of the Convention of 1867,* 8-10.

[71] At this time the Fourteenth Amendment had not been adopted (proclaimed July 28, 1868); and the Fifteenth Amendment was not passed by Congress until February, 1869. In the North there was great difference of opinion on the advisability of granting Negro suffrage. Andrew C. McLaughlin, *A Constitutional History of the United States,* 678-680.

[72] The minority report was written by Joseph H. Speed and Benjamin L. Wheelan. Speed was a graduate of Hampden-Sydney, a college professor, and Confederate army officer. He joined the Republican party shortly after the war and now advocated "universal amnesty and universal suffrage." Wheelan, a lawyer, went to the University of Alabama, but finished at Georgetown University. He was an old-line Whig before the war and opposed secession in 1861. He voted as a moderate in the convention of 1867, "having been elected by the floating vote" of Hale County. Montgomery *Daily State Sentinel,* November 22, 26, 1867.

[73] All were denied the franchise who were disqualified from holding office by section three of the pending Fourteenth Amendment.

[74] *Journal of the Convention of 1867,* 30-35.

[75] Fleming, *Documentary History of Reconstruction,* I, 402.

The second section provided that the legislature of the state could never allow anyone to vote or hold office who in the late war "violated the rules of civilized warfare," or had been convicted of treason, malfeasance in office, crime, or any registered voter who refused to vote on the question of the ratification of the constitution when it was submitted. The latter provision was necessary, the report declared, because under the Second Reconstruction Act, which provided for ratification "by a majority of the votes of the registered electors" (not merely a majority of those voting), the Conservatives would defeat the new constitution by abstaining from voting. Moreover, the report claimed that the Conservatives would stay away from the polls unless forced to vote in order to distinguish Conservatives from Radicals, the latter being "marked men." "If the loyal men of the nation had the right to compel men to register, if they wished to vote, and to take an oath before they could register, the loyal men of this State certainly have the right to say that men must vote, if they desire to be re-registered," the report argued.[77] The most proscriptive clause in this section was the proviso that all who shall have been convicted of treason shall be disfranchised.[78] The Montgomery *Daily Mail,* November 22, 1867, declared:

> It actually disfranchises every citizen who, owning $20,000 worth of property, applied for a pardon from the president. How many applied for pardon in Alabama we have no means of knowing. But we know that they could not have fallen under twenty or thirty thousand. Everyone of these gentlemen, as soon as his name appeared on the books of the secertary of state, was pounced upon by the leeches of the federal courts; his property was libelled, and he was compelled by Judge Busteed[79] to confess himself guilty of treason in open Court, before he was permitted to take advantage of the president's pardon.

The third section of the report prescribed an oath which required one to swear away forever opposition to Negro suffrage, accept the political and civil equality of the Negro with the whites, the whole Radical plan of Reconstruction, and agree never to change these by the amending process.[80] As few Conservatives would take the oath, they would remain disfranchised.

---

[76] Montgomery *Daily State Sentinel,* November 16, 1867. However, one Carpetbagger stated in the heat of debate that "most of the loyal men in the state had come in the last year and a half."

[77] *Journal of the Convention of 1867,* 34.

[78] The scheme of disfranchising those "who shall have been convicted" of treason, thereby disfranchising those who had applied for pardons was reportedly the idea of D. H. Bingham and Albert Griffin. Thomas, *op. cit.,* 93.

[79] Judge Richard Busteed of New York City had been appointed United States district judge for Alabama in 1864 by President Lincoln, which position he occupied until 1874 when he returned to New York. Owen, *op. cit.,* III, 272.

The minority report[81] did not contain the proscriptive features of the majority report nor the disfranchising oath. "The right of the elective franchise" was extended "to all men of every race and color, who will take an oath of allegiance to the government of the United States, and the State of Alabama, abandoning forever the right of secession as a constitutional right." The minority begged the convention to "act with moderation, discretion, wisdom, justice, and with charity to all and malice toward none." The report declared that the vindictive and proscriptive policy of the majority had gone far beyond the requirements of Congress in the Reconstruction acts, which the convention lacked power to do. If the majority plan were placed in the new constitution, the voters in Alabama would defeat the constitution when submitted; Congress might even refuse to readmit the state because of excessive proscription, they argued.[82]

Very little was said about the issue of Negro suffrage in the convention, although the press of the state contained pages against it. The Reconstruction acts had provided for Negro suffrage and unless the convention extended suffrage to the Negro in the new constitution, Alabama would not be readmitted to the Union. James Hurt Howard of Crenshaw, one of the two Democratic delegates in the convention, made the sole speech against Negro suffrage.[83] He based his opposition on the Negro's lack of education and experience in government, declaring that the place for the ignorant Negro "was the cornfield and the cotton patch."[84] Radicals declared that Negro suffrage was not only necessary for readmission but desirable as a guarantee that the Republican party would remain in power in Alabama. Coon, Radical Carpetbagger from Iowa, asserted "the Republican party cannot be saved except by the Negro vote in the Southern states."[85] The Scalawags, who as a group were bitterly opposed to political and social equality of Negroes with whites, and feared the use of the Negro vote by Black Belt leaders (Carpetbaggers or Conservatives), did not oppose Negro suffrage because they realized that for the present Negro suffrage was the price of readmission.

---

[80] The oath read as follows: "I, ———, do solemnly swear (or affirm) that I will support and maintain the Constitution and the laws of the United States, and the Constitution and laws of the State of Alabama; that if I have ever believed in the right of the State to secede, I hereby abandon it; that I accept the civil and political equality of all men, and agree not to attempt to deprive any person or persons on account of race, color, or previous condition of any political or civil right, privilege or immunity enjoyed by any other class of men; and furthermore, that I will not in any way injure or countenance in others, an attempt to injure any person or persons, on account of past or present support of the government of the United States, the policy of the Congress of the United States, or the principle of the political and civil equality of all men, or of affiliation with any political party."

[81] See *Journal of the Convention of 1867*, 35-37, for the minority report.

[82] *Ibid.*, 37.

[83] Montgomery *Weekly Advertiser,* November 19, 1867.

[84] *Ibid.* See also Montgomery *Daily State Sentinel,* November 14, 1867.

[85] Montgomery *Weekly Advertiser,* November 26, 1867. The Negro vote could be used more effectively with the whites disfranchised. Griffin declared that "the success and salvation of the Radical party, I assert, depends upon the passage of

The Radical Carpetbag leaders, Albert Griffin, Dainel H. Bingham, Andrew J. Applegate, Thomas Haughey, S. S. Gardner, Datus E. Coon, and John C. Keffer, were bitter in their denunciation of rebels, secessionists, and traitors.[86] Griffin warned that in less than two years, unless the proscriptive features of the majority report were adopted, the rebels would "drive out every Union man in the State, and deprive the Negro of the elective franchise."[87] He would disfranchise all the "incarnate fiends who had hunted Union men with blood hounds, who had whipped the wives and daughters, and sisters of Union men, who had starved prisoners, and who had violated every moral principle, and acted like devils turned loose from hell."[88] Bingham made violent speeches in favor of disfranchisement. He would disfranchise "those merciless wretches who had ruined the country, and only wished to close the doors of the capitol on this enlightened assembly, and if possible to do all the harm, personally and collectively, against this body of loyal men and all the loyal people of the State." In future years he "might be prevailed on to give the rebels a back seat, but it should be a long way back and a long time hence."[89] Thomas Haughey of Morgan County said that "his constituents demanded the disfranchisement of nearly all who participated in the rebellion."[90]

---

the disfranchising clauses of the majority report." *Appletons' Annual Cyclopaedia and Register of Important Events,* VII (1867), 32. Hereinafter cited as *Appletons' Annual Cyclopaedia.*

[86] The speeches of John C. Keffer and S. S. Gardner in favor of the majority report on the franchise are printed in the Montgomery *Daily State Sentinel,* November 16, 20, 1867. Keffer said that the majority report removes fear "that the old political aristocratic pro-slavery leaders will obtain power in the State." S. S. Gardner pleaded with the convention to disfranchise the Southern oligarchy and give the state for the first time "a republican form of government." In this Southern oligarchy "public opinion is made by the enemies of our cause, and the public rules with despotic sway."

[87] Montgomery *Weekly Advertiser,* November 12, 1867. The Radical leaders, especially the Scalawags, showed great contempt for the city of Montgomery, the center before the war of the wealth and culture of the plantation regime. Early in the convention, the Montgomery *Daily State Sentinel,* November 16, 1867, expressed the opinion that a majority of the convention favored removal of the capital from Montgomery. Although never passed, several ordinances were introduced for removal. Scalawag Thomas R. Peters, mad because it was doubtful whether the pay of the convention would be credited by the city board, moved "to seek another location for the distribution of the patronage of the government where the atmosphere is more loyal and the respect for the powers that be has a more civilized and Christian tone." See *ibid.,* December 4, 1867.

[88] Montgomery *Weekly Advertiser,* November 12, 1867.

[89] *Ibid.*

[90] Montgomery *Daily State Sentinel,* November 21, 1867.

President Peck left the chair and made a speech in favor of the majority report. He said:

> The success and salvation of the Radical party . . . depends upon the passage by this convention of the disfranchising clauses of the majority report. I believe the majority report while . . . not rigidly . . . confined to the letter of the Reconstruction Acts, is framed in the spirit and adheres to their intent and purpose. The great object which ought to govern the convention is to keep the State out of the control of disloyal men. . . . The oath protects the colored people of the State effectually against any infringement of the civil and political rights which have been recently granted and secures for Alabama perfect civil and political equality.[91]

A group of Scalawags, led by Joseph H. Speed, Henry C. Semple, Benjamin Wheelan, and George W. Graves were determined to defeat the proscriptive features of the majority report.[92] They argued that the disfranchising clauses were in violation of the Reconstruction acts. Speed declared that in the Reconstruction acts "Congress has most plainly pointed to the road we are to travel. . . . They are our chart and by them alone must we be guided."[93] And, Semple asked, "Is there any man who believes that if this convention goes beyond the requirements of the military bill that its action will be ratified by the people of Alabama or meet the approval of Congress?"[94] He objected to the clause in the oath which provided that in order to register one must swear never to deprive the Negro of any civil or political rights, because it was unfair to make one swear in advance to be forever committed to any policy. The colored people did not want the disfranchisement of the white race, he declared. They desired only "fraternity, equality, and liberty in the foundations of this new constitution."[95] Graves averred that in the campaign for the convention he pledged "the white and colored people the same rights . . . and if you make a constitution disfranchising the white man, I will use every effort in my power to defeat it."[96] Wheelan attacked the provision in the majority report which disfranchised anyone for not voting when the new constitution was submitted for ratification, declaring that "there is no supreme power in this Republic that can constitutionally . . . prevent me from exercising the suffrage or take away that right on such a frivolous pretext."[97]

---

[91] Fleming, *Documentary History of Reconstruction,* I, 452.

[92] The speeches of Joseph H. Speed, George W. Graves, and Benjamin Wheelan are printed in the Montgomery *Daily State Sentinel,* November 21, 23, 26, 1867. They all demanded universal suffrage and universal amnesty as the only foundation on which the new constitution could last.

[93] New York *Herald,* November 29, 1867. See also Montgomery *Daily State Sentinel,* November 26, 1867.

[94] Montgomery *Weekly Advertiser,* November 12, 1867.

[95] *Ibid.*

[96] Montgomery *Daily State Sentinel,* November 21, 1867.

[97] *Ibid.,* November 23, 1867.

The Negro delegates showed little interest in the disfranchisement of the whites and some of them spoke out against it. Tom Lee, Negro delegate on the franchise committee, said: "I have no desire to take away any rights of the white man; all I want is equal rights in the court house and equal rights when I go to vote. I think the time has come when charity and moderation should characterize the actions of all. Besides, the minority report is confined strictly to the reconstruction measures of Congress, which measures define the powers and limit the action of this convention."[98] Carraway, Negro delegate from Mobile, said that he would not disfranchise any whites "except the editors and publishers of rebel presses, who have done more harm than fifty thousand men."[99] Rapier, an outstanding Negro from North Alabama, would disfranchise only "those persons who are now disfranchised by certain acts of Congress."[100] The correspondent of the New York *Herald* wrote his newspaper that the Negro delegates were not interested in disfranchising the whites, yet they were forced to it by their white Carpetbag leaders and by the "menacing colored population in the city."[101] Pressure on the Negro delegates was so great that when the vote was taken on substituting the minority report for the majority, all the Negroes voted against it, even those who had previously spoken for it.[102]

For many of the Radical Carpetbaggers the majority report was not sufficiently proscriptive. Seven substitutes for the majority report and over twenty amendments, all seeking to disfranchise additional classes,[103] were submitted. Haughey would disfranchise all above the rank of captain in the Confederate Army, anyone who had served in the Confederate Congress or the Alabama state legislature during the war, anyone who had held any executive, judicial, or municipal office in Alabama during the war, any military or civil agent of the Confederate or state government, those in the secession convention of 1861, those who had killed or abused friends of the Union in Alabama, and those who had treated United States soldiers otherwise than as prisoners of war.[104] Scalawag W. C. Garrison,[105] more extreme than others of his class, would disfranchise those men who were members of the state convention of 1861 and voted for or signed the ordinance of secession; those who were members of the Confederate Congress and voted for the conscription law; all men who were disfranchised by the Reconstruction laws of Congress; all men who registered under the laws of Congress and afterwards declared themselves opposed to Congress and its laws; all military officers of the Confederate states above the rank of captain; all executive or judicial officers of the rebel states, or, so called Confederate government above the office of justice of peace, and bailiff; and all men who treated soldiers, sailors, marines, or employees of the United States, otherwise than as prisoners of war, or abused union citizens for their loyalty to the United States.[106] Applegate would disfranchise all who could not take the "iron clad" oath.[107] He also introduced an amendment to disfranchise all editors who had opposed Reconstruction.[108] Bingham would disfranchise all those who could not swear that they preferred the government of the United States to that of the Confederacy on the fourth of March, 1864.[109] Gardner would disfranchise all those who murdered loyal Union men.[110]

---

[98] Appletons' *Annual Cyclopoedia,* VII (1867), 31. See also Montgomery *Mail,* November 6, 1867; Thomas, *op. cit.,* 82.

[99] Montgomery *Weekly Advertiser,* November 19, 1867. In Carraway's speech on the franchise, printed in the *Daily State Sentinel,* November 16, 1867, he said: "I want to show to the world that I can be more magnanimous, more merciful, more charitable, than my predecessors who formerly assembled in this hall."

[100] *Journal of the Convention of 1867,* 84.

[101] New York *Herald,* December 1, 1867.

[102] For an account of the tremendous pressure on the Negroes from the Carpetbaggers, see New York *Herald,* November 21, 1867.

[103] *Ibid.,* November 18, 1867.

[104] *Journal of the Convention of 1867,* 42.

[105] Garrison was a preacher in Morgan County before the war, an unconditional Union man in 1861 and throughout the war. Because of persecution by Confederate supporters, he fled behind Union lines in North Alabama, where he remained until after the surrender in 1865. Montgomery *Daily State Sentinel,* November 20, 1867.

A few proposed amendments to the majority report suggested reforms in the suffrage. The Montgomery *Weekly Advertiser,* November 5, 1867, had declared that "if we must have Negro suffrage without a possibility of further escape from it—let us have an educational qualification which shall extend to and cover both white and black alike." Although not influenced by the *Advertiser's* editorial, William Henry Black, Carpetbagger from Illinois, would limit the franchise to "all who can read the Constitution of the United States and the State of Alabama, and write a good legible hand."[111] But Carraway, Negro delegate, opposed a "qualified suffrage, because that would press unequally upon the colored people of the State."[112] In order to meet the objection that many more Negroes than whites would be disfranchised by a literacy test, Pierce Burton, Carpetbagger from Vermont, suggested that the literacy test not go into effect until 1870, and then only for those who came of age on or after that date.[113] Carpetbagger Daniel H. Bingham moved that the date be moved up to 1877.[114] A literacy test for voting received small support in the convention. It would disfranchise nearly all Negroes and many Scalawags. Although interested in Negro education, few Carpetbaggers would forego the use of the Negro vote until that day arrived.[115]

---

[106] *Journal of the Convention of 1867,* 53.

[107] *Ibid.,* 83.

[108] Montgomery *Weekly Advertiser,* November 18, 1867.

[109] *Ibid.; Journal of the Convention of 1867,* 47.

[110] *Journal of the Convention of 1867,* 17.

[111] *Ibid.,* 45.

[112] Montgomery *Weekly Advertiser,* November 19, 1867. In this speech on the suffrage, Carraway further declared that the Negro could not meet the test and would never be educated "if the enemies of freedom in this state continue to burn down schoolhouses and insult the teachers that come from the North to teach the people. . . . The Irish in the North, and the uneducated whites in the South, have been voting since the foundation of the government [he said] without being any better qualified than the mass of newly enfranchised colored voters. . . ." The entire speech is printed in *Daily State Sentinel* November 16, 1867.

Debate was protracted on the suffrage article and feeling in the convention became very bitter. The moderates, some fifteen or more delegates, threatened to bolt the convention if the suffrage article exceeded Congress in disfranchising whites.[116] The people had not authorized further proscription and the convention was not all powerful, they argued.[117] A rift within the ranks of the Radical Republican party seemed imminent and General Pope in telegrams to the convention asked for moderation.[118] The correspondent of the New York *Herald* wrote at this time that "the question of the suffrage may end in the disruption of the lately organized Republican party in this state. The moderate men who have joined the party simply because they saw no other means of getting the state back in the union will not accept Negro suffrage unless the project of white disfranchisement be abandoned."[119] The Radicals in the convention held a caucus and sent a representative to "Washington for instruction."[120] Radical leaders in Washington discouraged an ultra proscriptive policy lest it injure the Republican party in the next election.[121] They advised against the provision that would disfranchise all who did not vote on the question of the adoption of the new constitution.[122] Moderates in the convention argued that there were no precedents for disfranchising a man because he did not vote,[123] and their arguments plus pressure from Washington prevailed. In a night session the provision was stricken from the majority report by a vote of 53 to 42, the more bitter Carpetbaggers like Griffin and Bingham voting with the minority.[124] The convention adopted the remainder of the majority report after adding amendments by Daniel H. Bingham, disfranchising those disfranchised by the Reconstruction acts (except such persons as aided in Reconstruction and accepted the political equality of all men) and those disqualified from holding office by the pending Fourteenth Amendment.[125]

---

[113] *Journal of the Convention of 1867*, 45.

[114] *Ibid.*, 46.

[115] It is interesting to note that all suggestions for an educational test for voting came from Carpetbaggers, who would apply the test at some time in the future.

[116] New York *World*, November 15, 1867.

[117] A contributed article in the Montgomery *Daily State Sentinel*, November 9, 1867, declared that the doctrine of an "all powerful convention" was "one of the heresies taught by the arch-traitor Yancey."

[118] New York *Times*, November 23, 1867; New York *Herald*, November 8, 1867.

[119] New York *Herald*, November 14, 1867.

[120] New York *Times*, November 15, 1867; Selma *Daily Messenger*, November 16, 1867. The New York *World*, November 15, 1867, said, "A small minority, chiefly southern men, threaten to bolt if the disfranchisement of the reconstruction acts is exceeded. General Swayne says the withdrawal will ruin the party."

[121] Selma *Weekly Messenger*, November 23, 1867. Recent elections in Ohio and Pennsylvania had gone against the Republicans and such Northern leaders as Horace Greely (who telegraphed the convention) and Senator Henry Wilson, as well as the northern Republican press, advised moderation. Montgomery *Daily State Sentinel*, December 9, 1867; Thomas, *op. cit.*, 93; Peter J. Hamilton, *The Reconstruction Period*, in *The History of North America* (Guy C. Lee and Francis N. Thorpe, eds.), XVI, 293.

[122] Selma *Weekly Messenger*, November 21, 23, 1867; New York *Times*, November 21, 1867.

[123] New York *Herald*, December 1, 1867.

The suffrage article as adopted was more proscriptive[126] in regard to the treason clause, the oath, and Fourteenth Amendment clause[127] and more permanent than the Reconstruction acts, as Congress could control the suffrage only until Alabama was readmitted. Control of the suffrage had been given to the states by the Constitution of the United States, and no federal restriction was placed on the state's control prior to the Fifteenth Amendment in 1870.[128] However, the clause disfranchising registered voters for not voting on ratification of the new constitution had been defeated and the way had been left open for Conservatives to attempt to defeat the new constitution by abstaining from voting.[129]

In summary, some of the educated Negroes in the convention were equal in debate and as intelligent as the best of their white colleagues. Other Negroes lacked opportunity, having been freedmen less than two years. Most Negroes were magnanimous and wanted universal amnesty as well as universal suffrage. Yet on the issue of further proscription of the whites they were victims of circumstances—forced in the final vote into a coalition with their Carpetbag superiors and extreme Scalawags.

[124] *Journal of the Convention of 1867,* 99; New York *Times,* November 21, 1867; Montgomery *Weekly Advertiser,* November 26, 1867.

[125] *Journal of the Convention of 1867,* 95.

[126] The suffrage provisions of most Reconstruction constitutions were revolutionary but in conformity with the Reconstruction Acts. However, those of Alabama, Arkansas, and Louisiana "frankly and blatantly disfranchised and disqualified for office Democrats, white and black, without reference to whether they had or had not aided the Confederacy." Coulter further points out that only Alabama, Louisiana, and Arkansas actually applied suffrage and officeholding restrictions against white people. Coulter, *The South During Reconstruction,* 136.

[127] The Fourteenth Amendment excluded from holding office any officeholder who had taken an oath to support the Constitution of the United States and had later engaged in the rebellion. The Alabama convention excluded this same class from the franchise. The suffrage article of the Alabama constitution did provide for further amnesty by the legislature. Article VII, Section 3.

[128] Of course, the Fourteenth Amendment provided that Congress might reduce the representation of any state which denied any group of its citizens the franchise.

[129] For some time this course of action had been discussed in the press and advocated by Alabama's Conservative leaders. Weeks before the convention met, the Montgomery *Daily State Sentinel,* October 22, 1867, declared that the "Rebels are organizing in Alabama and are counting on defeating ratification by keeping people from the polls."

Most of the Scalawags were honorable North Alabamians who had been Union men since the eighteen-fifties. Nearly all had voted for either Douglas or Bell in the presidential campaign of 1860 and had been stanch Union men in 1861. During the war many of them had been maltreated and driven from their homes by the Confederates and were now naturally revengeful toward their former persecutors. Although the outcome of the war had proven them right, a large minority were moderate, demanding a general amnesty for whites if Negro suffrage were adopted. Because their political beliefs were unpopular, they had not formerly attained political stature. Scalawags supported Negro suffrage as the price of readmission, but feared the social and political equality of the Negro.

The Carpetbaggers in the convention were a counterpart of their Radical colleagues in Congress, vindictive, sincere, and no more avaricious. Ten or more were in Alabama as agents of the Freedmen's Bureau. Some came South as others went West as America's restless population sought out unexploited sections of the nation. Others came as missionaries of a new order—based on the equality of all men. Still others had traveled in Alabama before the war or had been attracted by the climate and resources of the state while serving in the federal army. Many were interested in developing Alabama's mineral resources—most by honest if selfish methods. All considered the outcome of the war a revolution, which few Conservatives were yet ready to admit. The Carpetbaggers believed that Republicans were patriots and Conservatives traitors and were determined to build a Republican party in Alabama with the Negro vote. Although many of them believed in educational qualifications for voting, they could not afford to write a literacy test into Alabama's constitution and disfranchise the electorate on which the "loyal" government of Alabama depended for support.

CHAPTER IX

GENERAL PROVISIONS OF THE RECONSTRUCTION CONSTITUTION

The report of a special committee reaffirmed the major ideas of the preamble and bill of rights of previous Alabama constitutions, but the committee and the convention added new pro-Negro, anti-secessionist, and liberal features. It incorporated the classic phrase of the Declaration of Independence, "all men are created equal" into Alabama's bill of rights and declared that all citizens have "equal civil and political rights and public privileges."[1] The convention readopted the clauses abolishing slavery in the Constitution of 1865. No property qualification had ever been required to hold office in Alabama but the committee deemed it wise in order to protect the freedmen to declare that for the future "no property qualification shall be necessary to the election to, or the holding of any office in this state."[2]

The convention strengthened the provisions in previous Alabama constitutions against imprisonment for debt.[3] On motion of Albion Labat Morgan, Carpetbagger from Wilcox County, all the qualifying clauses of the old constitution were stricken out and it was simply provided "that no person shall be imprisoned for debt."[4] Since the Fourteenth Amendment had not yet been ratified, the convention decided to define state citizenship so as to include the Negro, rather than follow the committee report making all citizens of the United States citizens of Alabama.[5] Carpetbagger Daniel H. Bingham wanted a proviso against "peonage or contract labor of any form for longer than one year" added to the section outlawing slavery, but the convention refused to accept the amendment.[6]

A bitter controversy arose when the Carpetbaggers and Negroes attempted to write into the bill of rights a guarantee in favor of equal rights for Negroes on common carriers and in public places. Carpetbagger John C. Keffer proposed a section providing that "common carriers shall make no discrimination between citizens of this State travelling on public conveyances."[7] A section which provided that "railroads, steamboats, cars, hotels, etc., shall make no distinction for accommodations, between citizens on account of color" was introduced by John Carraway, a Negro.[8] Bitter debate followed between the Carpetbaggers and the Negroes on the one hand, and the Scalawags on the other. The Scalawags countered with a proposal which provided for separate accommodations as long as the whites wanted them.[9] In arguing for the latter section, Henry C. Semple, Scalawag from Montgomery, asserted that "society owed certain duties to itself, and its first duty was self-preservation." John C. Keffer, Carpetbagger and chairman of the Radical state executive committee, had forced this issue, he maintained. Keffer "thought the white men in the convention would be afraid to meet the issue; but proud and chivalric Southerners are afraid of nothing."[10] Nearly all the Scalawags, who of necessity went along with the Radicals on the suffrage, now went over to the other side, claiming that this provision granted the Negro social rather than political equality.[11] Saffold, who had supported the majority report on the suffrage, said that the Negro's enemies were "pressing this issue in order to bring a war of the races."[12] He would vote against including any section on the question in the bill of rights.

---

[1] *Journal of the Convention of 1867,* 139.

[2] *Ibid.,* 145.

[3] *Ibid.,* 142. The old constitution provided "that the person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison after delivering up his estate for the benefit of his creditors, in such manner as may be proscribed by law."

[4] *Ibid.* Morgan was a Republican from Elmira, New York, who moved to Alabama in 1866.

[5] *Ibid.,* 144.

[6] *Ibid.,* 145.

The Carpetbaggers, realizing the issue was a "firebrand" left the defense of equal rights on common carriers and public places to Negro speakers.[13] Carpetbaggers feared that the bitter reaction of the Scalawags would defeat other Radical objectives and even destroy the Radical party.[14]

---

[7] *Ibid.*, 144.

[8] Montgomery *Weekly Advertiser,* November 12, 1867.

[9] *Journal of the Convention of 1867,* 149. The Scalawag proposal read: "Equality of civil rights is not evaded by the adoption of such reasonable regulations by the proprietors of hotels, steamboats, railroads and places of public amusement as may be necessary to furnish separate accommodations to the two races which inhabit our country, so long as such separation shall be demanded by the sentiment of the white race."

[10] Montgomery *Weekly Advertiser,* November 26, 1867.

[11] *Ibid.*

[12] Selma *Daily Messenger,* November 30, 1867.

[13] *Ibid.* The Montgomery *Mail* paraphrased the following speeches by Negroes on the subject. Ovid Gregory said:

"How could the delegates go home to their constituents, nineteen-twentieths of whom were colored men, after having voted against their enjoying the same rights in all respects as white people? Did the gentleman from Montgomery [Henry C. Semple] feel polluted by sitting along side of Finley, his colored colleague? And if not, why should he feel polluted by sitting by his side in a car? For himself, he thought Napoleon on his throne was not a better man than he was."

John Carraway contended:

"At present, the colored man could not send his wife from one part of the state to another, because she would be placed in a smoking car, and exposed to the insults of low and obscene white men. He did not see how any friend of the colored man could vote against breaking down this monopoly."

James T. Rapier asserted:

The Selma *Daily Messenger* recorded that the Carpetbaggers "did not press the matter because it was about to break up the convention."[15] In order to placate the Negro the Radicals promised him that the next "legislature should and would carry it into effect."[16] Anyhow, they declared the second section of the bill of rights, which gave all citizens "equal civil and political rights and public privileges" would prevent the segregation of the races.[17] Finally, the new constitution contained no section on the subject because the Carpetbaggers feared to force the issue.[18]

When the committee on the legislative department reported, Carpetbagger Albert Griffin objected because it was "too approximate to the old constitution of Alabama, which was the most bungling concern that has ever been produced."[19] Henry C. Semple, Scalawag, replied that the "old constitution was founded and fathered" by some of the greatest men in the state's history and only one ignorant of Alabama's history would make such a statement.[20] However, there were fundamental changes in the legislative article. For the first time, the basis of representation in the state legislature was to be based on the "whole number of inhabitants" instead of "white inhabitants."[21] The Radicals demanded the former since the Negro vote was the foundation of their power. North Alabama Scalawag delegates gracefully accepted the new basis, knowing full well that it was an inevitable result of the abolition of slavery and the extension of the franchise to the Negro.

The convention omitted the "white man" qualification for legislative office, found in all previous constitutions of the state.[22] A new section

---

"The manner in which colored gentlemen and colored ladies were treated was passed his comprehension. He wanted the gentleman from Montgomery [Henry C. Semple] to understand that he did not consider himself honored by sitting in a car beside him, because he was a white man simply, but only because of his intelligence. He had dined with Lords in England in his lifetime. Out of respect for their constituents, the delegates ought to vote for the amendment." Quoted in Selma *Daily Messenger,* November 30, 1867.

[14] New York *Times,* November 27, 1867; Selma *Daily Messenger,* November 25, 1867.

[15] Selma *Daily Messenger,* November 25, 1867.

[16] New York *Herald,* December 12, 1867.

[17] Selma *Daily Messenger,* November 25, 1867.

[18] The proviso for constitutional clauses against segregation on a test vote received 65 votes to 23 against, but the Carpetbaggers failed to press for a final vote. The Scalawag proposal was defeated by a vote of 54 to 23, and the vote in both cases shows a determined group of 23 Scalawags in favor of constitutional provisions for segregation. Montgomery *Weekly Advertiser,* December 3, 10, 1867.

[19] *Ibid.,* November 19, 1867.

[20] *Ibid.*

[21] *Journal of the Convention of 1867,* 117.

[22] Article IV, Section 4.

instructed the legislature to "make adequate provision in each county for the poor of this state."[23] After the abolition of slavery, the plantation owner would no longer care for the Negro in old age; Freedmen's Bureau officials (twelve or more in the convention) thought the clause necessary for future relief work; and Carpetbaggers with an urban humanitarian background gave it their support.[24]

Certain reforms were written into the legislative article of the new constitution. Strong provisions against duelling disqualified anyone connected with a duel from holding any office in the state.[25] The first limit on taxation to be found in any Alabama constitution, forbade the legislature to give any municipal corporation the right "to levy a tax on real and personal property to a greater extent than two percentum of the assessed value of such property."[26] The convention also forbade the state to engage in internal improvements or pledge the state's credit for that purpose except in cases of "undoubted security" and by a two-thirds vote of the legislature.[27]

Certain clauses of Alabama's former legislative article were omitted because they were against Radical interests. Limitations on the legislature as to the passage of local and private legislation found in Alabama's earlier constitutions were striken out,[28] leaving no restrictions on one of the worst evils in state government. Also deleted were restraints earlier placed on legislators being appointed to civil office.[29] Freedmen's Bureau agents, registrars, mayors, and other civil officials in the convention opposed such a restriction under the new regime. The convention reduced the residence requirements for the House of Representatives to one year in the state and six months in the district.[30] Some attempted in vain on the floor of the convention to reduce the requirement to three months in the district.[31] Reduced residence requirements were necessary in order that Carpetbaggers and Negroes might become candidates for the next legislature. In order to insure federal control of state elections, the convention abolished the old state election day (the first Monday in August) and provided that state elections be held with federal elections on Tuesday after the first Monday in November.[32] The clauses in the old constitution protecting legislators from arrest during legislative sessions were strengthened.[33]

---

[23] *Journal of the Convention of 1867,* 150; Article IV, Section 34.

[24] New York *Herald,* November 29, 1867.

[25] *Journal of the Convention of 1867,* 129.

[26] *Ibid.,* 130.

[27] *Ibid.,* 128. There was much opposition in the convention to the adoption of the limitation on the legislature in regard to internal improvements. Some urged that the limitation "should not apply to any aid which may be given by the state to the building of the north and south railroad, extending from Montgomery to Decatur." Others, including some of the extreme Radicals, wanted to make it even more difficult for the legislature to pledge the credit of the state. Morgan wanted a provision submitting the question to a vote of the people before the pledge and Daniel H. Bingham wanted to place a tax not to exceed $50,000 on any railroad given state aid. *Ibid.,* 129, 137-138. The two-thirds provision and further checks on state aid advocated by some of the leading Radicals are interesting in light of the usual interpretation that the Radicals were the instigators and sole supporters of the policy of state aid which impoverished the state. The two-thirds provision did not stop aid to internal improvements by subsequent legislatures. For instance, the first legislature under the Constitution of 1868 passed a general law by the two-thirds majority giving state aid to all railroads hereafter to be built in this state, if thirty miles long, by endorsement of their first mortgage bonds at the rate of $12,000 per mile, upon the completion of twenty miles of track. Huntsville *Advocate,* November 24, 1868; Moore, *History of Alabama,* 496. See also Albert B. Moore, "Railroad Building in Alabama during the Reconstruction Period," *The Journal of Southern History,* I (November, 1935), 421-441.

[28] The omitted section reads: "No special law shall be enacted for the benefit of individuals or corporations, in cases which are provided for by a general law, or where the relief sought can be given by any court of this State."

[29] Article IV, Section 19.

Certain changes advocated in the legislative article, but which failed of adoption, are important because they further reveal the character and intent of the convention. A proviso that "no person could be a representative who could not read and write," was defeated because it would disqualify nearly all the Negroes.[34] Since many members of the convention held office in the Freedmen's Bureau or some other petty federal or state office,[35] a determined effort was made to strike from the report the section which forbade any person holding any lucrative office under the United States, Alabama, or any other state to be a member of the General Assembly.[36] Benjamin F. Saffold proposed to strike out "any lucrative office under the United States" and substitute "no member of Congress."[37] Albert Griffin moved to delete the prohibition against those holding a lucrative state office being members of the General Assembly.[38] This proposed change was defeated by the close vote of 32 to 31, the president of the convention casting the deciding vote.[39] An effort to give the legislature power to grant divorces, abandoned in

---

[30] *Journal of the Convention of 1867,* 116. The Selma *Daily Messenger,* November 28, 1867, recorded that Datus Coon, Carpetbagger, "became frightfully excited the other day in the convention at the proposition to require two years' residence as a qualification for a seat in the legislature." He said, that the only loyal talent in the State had come here within the last year and a half, and, if this measure was adopted, these gallant soldiers would not be allowed to be senators and representatives, and 'loil' niggers would have to hold these distinguished and lucrative offices." Previous Alabama constitutions had provided for two years in state and one in the district.

[31] *Journal of the Convention of 1867,* 131.

[32] *Ibid.,* 228.

[33] Article IV, Sec. 11, *Journal of the Convention of 1867,* 229.

[34] *Ibid.,* 116.

[35] Twelve or more Freedmen's Bureau agents, ten or more registrars, and mayors of Mobile and Selma did not want to be disqualified for a seat in the General Assembly. New York *World,* November 29, 1867.

[36] *Journal of the Convention of 1867,* 121.

[37] *Ibid.*

[38] *Ibid.,* 121.

[39] *Ibid.*

Alabama by the convention of 1861, was defeated.[40] Gregory, a Negro, attempted in vain to write into the new constitution provision for a colored orphans' asylum.[41] An amendment empowering the legislature at its first session to further disfranchise whites who participated in the rebellion and had not by that time aided in reconstruction was tabled by a vote of 43 to 37.[42] The close vote on this amendment, which was designed to force the people of the state to aid in Reconstruction, came after extended debate in which Griffin said that he wanted the rebels and traitors to know that they were "not to get off as easily as they expected and the rod would be kept over them for a long time yet."[43]

The report on the legislative department failed to carry the old proviso empowering the legislature to pass laws forbiding the intermarriage of whites and Negroes and many Scalawags were determined that such provision be made.[44] Semple submitted the section in the Constitution of 1865 for adoption, which made it "the duty of the General Assembly to pass such laws as may be necessary to prohibit the intermarriage of white persons with persons of color, to the fourth generation, and declaring such marriages void *ab initio,* and to subject persons contracting such marriages to such penalties as may be deemed expedient."[45] Carraway, a Negro, in retaliation moved that in addition it be provided "that any white man intermarrying or cohabiting with colored women, shall be imprisoned for life."[46] Gregory, a Negro, wanted the convention to provide that any white man who had "taken up" with a Negro woman "should be forced to have the act made legal."[47] One Scalawag answered that while he was truly loyal, he was proud of the fact that he was a white man, and he intended forever to hold up the superiority of the white race.[48] As the debate continued and the Scalawags became more embittered, again Carpetbag leaders feared the Negro issue might break up the Radical party in Alabama.[49] The more moderate Carpetbaggers argued that there was no real danger of intermarriage of the races, that it was absurd to put such a prohibition in the constitution, that it would only further anger Northern Radicals and make things worse for the South.[50] But, extreme Carpetbaggers like Albert Griffin and Daniel H. Bingham made speeches calling for complete social equality,[51] even intermarriage of the races. Constitutional prohibition of marriage between the races would be in violation of the Civil Rights Act, the Negroes declared.[52] The Scalawags were defeated by a vote of 45 to 31[53] in a test vote on this issue and the final vote was 58 to 22 against placing such a prohibition in the constitution.[54] Extreme Scalawags voted with the Carpetbaggers and Negroes because they thought such a prohibition unnecessary, not because they favored social equality.

---

[40] *Ibid.,* 231. Eight couples were divorced by the convention itself, in each case because the husband had gone off to the Federal Army. Montgomery *Daily State Sentinel,* December 5, 1867.

[41] *Journal of the Convention of 1867,* 230.

[42] New York *Times,* November 23, 1867.

[43] Montgomery *Weekly Advertiser,* November 26, 1867.

[44] *Journal of the Convention of 1867,* 188, 217; *Appleton's Annual Cyclopaedia,* VII (1867), 33.

[45] *Journal of the Convention of 1867,* 188-189.

[46] *Ibid.,* 189. The Montgomery *Weekly Advertiser,* December 3, 1867, records that "this amendment was considered very funny by some of the members and there was laughing and knocking of feet."

[47] Montgomery *Weekly Advertiser,* November 12, 1867.

[48] *Ibid.,* December 3, 1867. During debate on this issue an editorial in the Selma *Daily Messenger,* December 1, 1867, declared that "Radicalism means the perfect equality of the races" and called on "Saffold, Speed, Graves, Semple, Walker of Jefferson and others of the better class of delegates" to withdraw from the convention.

[49] Montgomery *Weekly Advertiser,* December 3, 1867.

The report of the committee on the executive department made all executive officers elective by the people.[55] The governor and county sheriff had been elected by the people since 1819, but all other executive officers (secretary of state, treasurer, auditor, and attorney general) had been elected by joint ballot of the state legislature. There was much agitation in Alabama for making these offices elective by the people in the eighteen fifties, but all efforts to do so failed. The convention of 1867 made the change without opposition, turning over to the new electorate, composed largely of freedmen, a privilege never given the old electorate. The report provided for a lieutenant governor for the first

[50] *Ibid.*

[51] *Ibid.;* Selma *Daily Messenger,* November 30, 1867. However, John Hardy, the leading Republican editor in the state declared the charge of the Conservatives that the Republican party favored social equality was untrue as "social equality is one thing and political equality is another thing. The first is not possible in any country; the latter is practicable only in a Republican government." He defined political equality as equal taxation, equal justice, equal legal rights and public education for all. He pointed out that white men and women "of respectable social status" were not afraid of "social equality" and could meet "the less gifted and less fortunate African in the discharge of the duties of a citizen, without impairing social status." It was the uneducated and less fortunate white man who feared social equality, he said. Montgomery *Daily State Sentinel,* September 27, 1867.

[52] Selma *Daily Messenger,* November 30, 1867; New York *Times,* November 30, 1867.

[53] Montgomery *Weekly Advertiser,* December 3, 1867.

[54] *Ibid.,* December 10, 1867.

[55] *Journal of the Convention of 1867,* 105. Before and during the sessions of the convention, John Hardy wrote many editorials on Alabama's constitutional needs. His office in Montgomery became a meeting place for delegates to the convention. In an editorial on September 4, 1867, a month before the convention assembled, he advocated the election of all executive officials by the people and other democratic features of the constitution of 1868. Although Hardy seems to have had great influence on the delegates, no doubt he and the delegates themselves borrowed many of these ideas from the more liberal American constitutions. Alabama, which had a democratic constitution from the beginning, was moving in the direction of the election of all executive and judicial officials by the people before the Civil War. For a list of the large number of important convention delegates in Hardy's office on first day of convention, see Montgomery *Daily State Sentinel,* November 5, 1867.

time in Alabama history.[56] As presiding officer in the Senate, he could cast a vote only in case of a tie, and was first in line of succession to the governorship. Opposition arose to the creation of the lieutenant governor on the ground that he was a useless official; but the convention created the office by a vote of 39 to 37.[57] A majority report, signed by five members, provided for a two-year term for all executive officers except the auditor who was given a four-year term.[58] Two members signed a minority report in favor of a six-year term.[59] The two year term was adopted as few delegates supported a term of six years; a motion from the floor for a four-year term was defeated by a vote of 49 to 42.[60] The convention of 1867 struck from the old constitution gubernatorial qualifications which some of their members could not meet: namely native citizenship, four-year residence in Alabama, and the attainment of thirty-five years of age.[61]

Unlike most reconstruction constitutions, Alabama's did not increase the governor's power.[62] Lest the governor relieve rebels from "civil or political disability," such cases were denied him under the pardoning power.[63] Neither the report requiring a two-thirds majority of the legislature instead of a majority to override a governor's veto nor that allowing him to appoint, with the consent of the Senate, all judges of the several courts, solicitors, and chancellors was adopted.[64]

The judiciary committee report, the most conservative brought before the convention, provided for the appointment of all judges, solicitors, and justices of the peace by the governor with the consent of the Senate.[65] Chairman Henry C. Semple of Montgomery, along with other moderates,[66] feared popular election of the judiciary by the newly created electorate.[67] However, the convention voted 53 to 25 to substitute a section introduced from the floor providing that judges of the Supreme Court and chancellors be elected by joint ballot of the General Assembly and all other judges by the people.[68] This was the method of selection to be found in the Alabama Constitutions of 1861 and 1865 and, after a short debate, was adopted by a vote of 45 to 36.[69] Nevertheless, a few days later the Radicals reopened the whole question and were able to provide for the election of all judges by the people.[70] On motion of Applegate, solicitors were also made elective by the people.[71] A motion from the floor, which would protect the Supreme Court by making only former circuit judges eligible to be elected thereto, was defeated.[72] The moderates were again out-voted in their attempts to provide for the election of judges on a day other than federal election day.[73]

---

[56] *Journal of the Convention of 1867,* 108. The Montgomery *Daily State Sentinel,* September 4, 1867, advocated a lieutenant governor.

[57] *Journal of the Convention of 1867,* 105.

[58] *Ibid.,* 106.

[59] *Ibid.,* 72. Hardy advocated a six-year term. Montgomery *Daily State Sentinel,* September 4, 1867.

[60] *Ibid.,* 106-107.

[61] *Ibid.,* 105-110.

[62] Coulter, *op. cit.,* 135.

[63] *Journal of the Convention of 1867,* 107, 233.

[64] *Ibid.,* 229; New York *Times,* November 23, 1867; Selma *Daily Messenger,* November 23, 1867.

[65] New York *Times,* November 23, 25, 1867.

[66] *Ibid.;* Selma *Daily Messenger,* November 23, 1867. The Montgomery *Advertiser,* December 3, 1867, complained that the Negroes were led to believe that they were competent "to elect a Supreme Court judge, although the privilege had never been granted to the intelligent voters of the state. The object was a real 'nigger tickler' and the thing will pay the 'constitutional members' in the way of nigger votes for fat offices."

[67] The New York *Times,* November 23, 1867, said that "appointment of judicial officials is provided in order to prevent the elections being controlled by colored voters." On November 25, 1867, the *Times* further declared that "the provision

For the first time in Alabama, the attorney general was instructed by the constitution to prepare drafts of bills and written opinions on matters under consideration by legislative committees.[74] In order to provide additional officials for petty civil and criminal cases, notaries public were given "justice of the peace" powers,[75] another innovation in the state's constitutional history. To protect the freedman in his new role as contract laborer, the report provided that the legislature might confer on the probate courts "jurisdiction of contracts for labor, and order frequent sessions for that purpose."[76]

New articles in Alabama's Reconstruction Constitution on education,

---

for establishing an appointed rather than elected judiciary . . . was undoubtedly framed so as to avoid the contingency of colored judicial officers being elected in strongly Negro districts."

[68] *Journal of the Convention of 1867,* 163.

[69] *Ibid.,* 164.

[70] The convention voted 51 to 29 in favor of popular election of all judges, but a test vote (45 to 40) on a motion to except Supreme Court judges comes near showing the real feeling of the convention on the subject. *Journal of the Convention of 1867,* 168-169; Montgomery *Weekly Advertiser,* December 3, 1867. Even some of the more extreme Radicals (like Bingham and Griffin) were not consistent in the debates and voting on this issue. The above issue of the *Advertiser* observed: "Some of the Radical members voted the wrong way, thereby renouncing some of their radicalism, and hurting themselves with the people." Hardy advocated appointment of judges by the governor and confirmation by the Senate. Montgomery *Daily State Sentinel,* September 4, 1867.

[71] *Journal of the Convention of 1867,* 172.

[72] Montgomery *Weekly Advertiser,* December 3, 1867. The convention struck out the section of the old constitution disqualifying all judges seventy or more years of age. The Montgomery *Advertiser,* of the above date, charged that the qualification was omitted so that "old Bingham" might still be "permitted to hold a judgeship."

[73] *Ibid.; Journal of the Convention of 1867,* 168. Formerly, in order that the independence and integrity of the judiciary be preserved, Alabama had chosen her inferior judges in May, held other state elections in August (in order to prevent Federal interference), and in accordance with the United States Constitution held her Federal elections in November.

[74] *Journal of the Convention of 1867,* 172.

[75] *Ibid.,* 170.

[76] *Ibid.,* 161.

corporations, militia, and exempted property were taken from recently adopted mid-western constitutions—the Michigan Constitution of 1850, Indiana and Ohio Constitutions of 1851, and the Iowa Constitution of 1857.[77] These articles were injected into Alabama's constitutional history by the Radicals. "The artificer of this system [declared the Montgomery *Advertiser*] must not have been a native Alabamian."[78]

Former Alabama constitutions had contained sections on education; but the article on education in 1868 broke with the past both in regard to the administrative system and the large amount of funds allocated to schools. The way had been prepared for a new article on education by the Alabama Republican press and the Republican state platform, which declared in favor of "free schools and the most liberal provisions by the state for the purpose of educating the people."[79] The Mobile *Nationalist*, organ of the Republican party in Mobile, declared that "the point that the Republican party is a unit upon is that every child in the state must and shall have an opportunity to acquire an education."[80] "Proper powers must be conferred on the legislature [argued the Montgomery *Daily State Sentinel*] to not only enable but to force that body to establish a thorough system of public education in the state."[81] The Republicans recognized that an efficient school system was desperately needed to educate the new electorate, but declared that thousands of whites were also illiterate.[82] They often cited the educational activities of the Freedmen's Bureau in order to prove their party's interest in education.[83] Hence, when the convention met, the educational problem had been made second in importance only to the suffrage.

The convention made Gustavus Horton, Scalawag and cotton broker of Mobile, chairman of its committee on education.[84] In 1852 he had been one of the organizers of the Mobile public school system, and the first president of the Mobile board of school commissioners.[85] Three members of the committee, John Silsby, Benjamin Yordy, and Charles Waldron Buckley were agents of the Freedmen's Bureau. Buckley was state superintendent of education for the Bureau, and Silsby a preacher attached to it. All that is known of Yordy is that he was an official of the Bureau. The report of the committee was taken almost completely from the article on education in the Iowa Constitution of 1857.[86] Horace Mann Bond suggests that the provisions of the Iowa Constitution may have been brought before the committee by John Silsby,[87] only member of the committee known to have lived in Iowa. Democrats later declared, however, that the provisions were introduced by Datus E. Coon, editor in Iowa in the eighteen fifties.[88] The report placed the public schools and all state institutions of higher learning under the management of a Board of Education, to consist of a superintendent and two members from each congressional district, all elected by the people for a term of two years.[89] Although its laws might be repealed by the General Assembly, the board was given full legislative power to enact laws in regard to education.[90] Laws enacted by the board had to be signed by the governor and might be carried over his veto by a two-thirds vote. Meeting annually at Montgomery simultaneously with the legislature, its sessions were limited to twenty days. Special sessions of the board were to be called by the governor on recommendation of two-thirds of its membership. One-fifth of the aggregate annual revenue of the state was devoted exclusively to the maintenance of public schools. In addition, certain sources of income were designated for education. A state poll tax of $1.50 was to be used exclusively for public schools.[91] Moveover, school districts were given power to levy a poll tax to be used locally for education. Furthermore, all federal lands granted for educational purposes and a tax placed on industrial and commercial corporations in the state were earmarked for education. The convention made the board of education the board of regents of the state university, giving it power to appoint the president and the faculty of that institution.[92] On motion

---

[77] Francis N. Thorpe, *Federal and State Constitutions*, IV, 1088, 1149, 1151; IV, 1964-1965; V, 2931.

[78] Montgomery *Weekly Advertiser*, December 17, 1867.

[79] The Republican state platform is printed in the Montgomery *Daily State Sentinel*, June 6, 1867, the day the Republican State Convention met, and for months thereafter. For editorials by John Hardy on a public school system for Alabama, see *ibid.*, September 4, 30, October 31, November 2, 1867.

[80] Mobile *Nationalist*, January 23, 1868.

[81] The Montgomery *Daily State Sentinel*, October 31, November 16, 1867.

[82] In an editorial, John Hardy declared there were 600,000 people in Alabama capable of taking a common school education (many of them whites), who could neither read nor write. *Ibid.*, October 31, 1867.

[83] *Ibid.*, June 20, July 9, 13, 1867.

[84] *Journal of the Convention of 1867*, 10. The committee was composed of four Carpetbaggers, two Scalawags, and one Negro.

[85] Willis G. Clark, *History of Education in Alabama, 1702-1889*, 223; Owen, *op. cit.*, III, 845.

[86] Thorpe, *op. cit.*, II, 1151; Horace Mann Bond, *Negro Education in Alabama*, 88.

[87] Bond, *op. cit.*, 87. However, John Hardy, advocated an educational article in the Montgomery *Daily State Sentinel*, September 4, 1867, very similar to that found in the Iowa constitution, more than a month before the meeting of the convention. His plan called for a centralized school board with legislative powers in the educational field, subject only to review by the state Senate. It therefore appears that he was the first Radical in Alabama to advocate the essential features of the Iowa plan.

[88] Mobile *Register*, December 2, 1874, July 15, 1875.

[89] *Journal of the Convention of 1867*, 151-159.

[90] This grant of power is exactly like that given the board by the majority report of the committee in the convention in Iowa in 1857. But the Iowa convention placed limitations on it which the Alabama convention did not do. See Bond, *op. cit.*, 88, 90, 322.

[91] The provision for the poll tax was adopted despite the fact that the Republican state platform had gone on record for the abolition of the poll tax. See Republican state platform, Montgomery *Daily State Sentinel*, June 6, 1867; Wetumpka *Elmore Standard*, July 26, 1867.

[92] *Journal of the Convention of 1867*, 154.

of Daniel H. Bingham, it was provided that Alabama should take advantage immediately of the Morrill Education Act and secure its 240,000 acres of land for an agricultural college, either to be established as a "branch of the University of Alabama for instruction in agriculture" or at some other site.[93]

With the exception of the provision for "one or more" schools in each school district, the article on education was adopted without debate. The report of the committee by the above wording left the matter of segregation of whites and blacks to the board. Scalawags demanded separate white and Negro schools and Speed moved that a proviso that "separate schools shall be established for white and colored children" be placed in the article.[94] It was impossible, he said, to make "white children attend the same schools with Negroes."[95] Graves declared that "great mischief would result from intermingling black and whites at school."[96] Albert Griffin argued in favor of mixed schools, declaring that white and Negro children played on the streets of Montgomery together and could go to school together.[97] Most of the delegates did not want mixed schools; neither did they want constitutional prohibition. Carpetbaggers feared constitutional prohibition might alienate Negro voters. Negroes did not want mixed schools but believed that a constitutional provision for separate schools would mean that the white schools would get most of the money.[98] Carraway, a Negro, countered Speed's proposed amendment with a proviso for equal division of school funds between the whites and Negroes in each school district.[99] Since the threat of mixed schools could always be used to secure equal appropriations for white and Negro schools, Speed's amendment was defeated by a vote of 54 to 28 and Carraway's proviso tabled.[100]

The article on education was significant in several major particulars: (1) the high degree of centralization in the system; (2) the broad powers bestowed upon the board, especially its legislative powers; and (3) the large amount of revenue earmarked for education. Although the value of some features of the education article (such as endowing the board with legislative powers) may be questionable, the article was the result of a sincere attempt to give the state a good public school system. It was not the fault of members of the convention that continued economic depression, the disorganized condition of society following the war, and the incompetence and mismanagement of some school officials

[93] *Ibid.*, 156.

[94] *Ibid.*, 153.

[95] Montgomery *Weekly Advertiser*, November 26, 1867.

[96] *Ibid.*

[97] *Ibid.*

[98] *Journal of the Convention of 1867*, 238; Fleming, *Civil War and Reconstruction in Alabama*, 522; Bond, *op. cit.*, 93.

[99] *Journal of the Convention of 1867*, 238.

[100] Montgomery *Weekly Advertiser*, November 26, 1867.

prevented the organization of a good public school system on the basis of the education article.

The report of the committee on the militia was taken from the Ohio, Indiana, and Iowa constitutions,[101] except for two changes. No provision was made for segregation in the report of the committee on the militia in the Alabama convention, whereas the midwestern state constitutions declared "all able bodied white inhabitants" should serve in the militia. Secondly, the authors of the militia report created a "volunteer militia" and a "reserve militia."[102] The former was to be made up largely of "loyal" Negroes, since the convention passed an ordinance declaring there should be one company of "volunteer militia" to one hundred registered voters, a majority of whom were in "black belt" sections of the state.[103] Although Conservatives claimed that this system would place "the state under a militia dynasty similar to Brownlow's" in Tennessee, it was adopted by a large majority.[104] Other provisions of the militia article made the governor its commander in chief; released from service those who "from scruples or conscience, may be averse to bearing arms"; exempted militiamen from arrest at musters except for felony, treason, or breach of peace; and granted the legislature the right to decide how the officers of the militia should be selected.[105]

The report of the committee[106] on corporations (both municipal and private) reflected the Carpetbaggers background and interest in industry and urban development. Articles by that title in the Michigan Constitution of 1850, the Ohio and Indiana Constitutions of 1851, and the Iowa Constitution of 1857 formed the basis of the report,[107] although some of the provisions on banking appear in earlier Alabama constitutions. Only municipal corporations could be formed under special acts; all others must be formed in conformity with general laws. The legislature should incorporate towns and cities and "restrict their power of taxation, assessment, and contracting of debt." Lest the "sanctity of a contract" be claimed, the right of the state to change the law under which a corporation was formed was plainly stated in order to allow regulation by the legislature. Stockholders were made liable only for the amount of stock held in a corporation. Banks could be chartered only under a general banking law, and all their bills and notes "shall be at all times redeemable in gold and silver." The legislature was forbidden to suspend specie payments.[108] A drastic regulation, taken from the Indiana Constitution of 1851, provided that "every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business."[109] "The State shall not [the report provided] be a stockholder in any bank." Neither could the credit of the state be lent to any banking company, association, or corporation except for the construction of railroads or works of internal improvements, and then only by a two-thirds vote of the legislature. The report of the committee was adopted by the convention without change.

---

[101] *Journal of the Convention of 1867,* 111-113, 252; Thorpe, *op. cit.,* II, 1089, 1148; V, 2927.

[102] Montgomery *Weekly Advertiser,* November 26, 1867; New York *Times,* December 1, 1867.

[103] *Journal of the Convention of 1867,* 257; New York *Times,* December 1, 1867.

[104] New York *Times,* December 1, 1867.

[105] *Journal of the Convention of 1867,* 111-113.

[106] *Ibid.,* 173-175.

[107] Thorpe, *op. cit.,* II, 1088, 1149; IV, 1964; V, 2931.

The "exempted property" article of the new constitution was borrowed from the Michigan Constitution of 1850.[110] In order to protect the Negro contract laborer one new section was added providing that exemption rights should "not be so construed as to prevent a laborers lien."[111] The report exempted the personal property of any resident of Alabama to the value of $1,000 from sale for debt. Every homestead not exceeding eighty acres of land and buildings thereon or any city lot and dwellings thereon not to exceed $2,000 in value were exempted from sale for debt, unless it be a mortgage lawfully obtained. Sections guaranteeing the rights of married women were placed in the Alabama constitution for the first time. To be valid, a mortgage signed by a married man would require the signature of his wife. Section VI of the report provided that a married woman's property shall remain her own "separate estate and property . . . and shall not be liable for any debts, obligations, and engagements of her husband, and may be devised or bequeated by her the same as if she were a femme sole."[112] For twenty years prior to 1868, statutes in Alabama had been enlarging the rights of married women and abrogating the common law rights of the husband to the estate, real or personal, of the wife.[113] The convention of 1867 placed these guarantees in the constitution so that the common law could not be restored by legislative enactment. The report of the committee was adopted without change.[114]

---

[108] The legislature and all banks in Alabama had suspended specie payments in 1861.

[109] Article XIII, Section 11; Thorpe, *op. cit.,* II, 1089. The Mobile *Times* said of the new constitution that "the financial question is treated after the style of Andrew Jackson. No chartered banks; no state faith pledged; all for the people and by the people! Happy people." Quoted in Mobile *Nationalist,* January 23, 1868.

[110] *Journal of the Convention,* 194-195; Thorpe, *op. cit.,* IV, 1965. The report was more generous in its exemptions than the Michigan constitution. Whereas the Michigan constitution exempted $500 in personal property and a homestead of forty acres of land, the report exempted $1,000 in personal property and eighty acres of land. There had been no previous sections exempting property in earlier Alabama constitutions.

[111] *Journal of the Convention of 1867,* 194.

[112] *Ibid.,* 195.

[113] Thomas E. Skinner, *Alabama Constitution Annotated,* 719.

The new article on industrial resources was the result of agitation by Scalawags John Hardy and Noah B. Cloud[115] for including such an article in the Constitution of 1868. John Hardy's editorials and Noah B. Cloud's contributed articles declared that its provisions should encourage immigration and secure the general economic recovery of the state.[116] Radicals from the North, interested in reviving Alabama's agriculture and developing her industrial resources gave the movement their support. A bureau of industrial resources, headed by a commissioner, was established by the convention.[117] The duties of this bureau were defined as follows:

> The Commissioner of Industrial Resources shall collect and condense statistical information concerning the productive industries of the State; and shall make, or cause to be made, a careful, accurate, and thorough report upon the agriculture and geology of the State, and annually report such additions as the progress of scientific development and extended explorations may require. He shall, from time to time, disseminate among the people of the State such knowledge, as he may deem important, concerning improved machinery and production, and for the promotion of their agricultural, manufacturing, and mining interests; and shall send out to the people of the United States and foreign countries such reports concerning the industrial resources of Alabama as may best make known the advantages offered by the State to immigrants; and shall perform such other duties as the General Assembly may require.[118]

The convention showed great interest in encouraging immigrants to come to Alabama. It passed an ordinance (not incorporated in the constitution) creating the new post of commissioner of immigration, and naming Noah B. Cloud commissioner.[119] He was to collect and distribute "all the information calculated to induce immigration to this state."[120] The legislature was made responsible for "the establishment of information agencies in the North and in Europe, and in general to encourage immigration by all means in its power."[121]

---

[114] *Journal of the Convention of 1867,* 195, 219.

[115] Noah B. Cloud had been editor of the *American Cotton Planter* before the war and the leading agricultural reformer in the state. After the war he joined the Republican party and was elected State Superintendent of Education in 1868. For an appraisal of Cloud's ante-bellum career, see Weymouth T. Jordan, "Noah B. Cloud's Activities on Behalf of Southern Agriculture," *Agricultural History,* XXV (April, 1951), 53-58.

[116] Montgomery *Daily State Sentinel,* August 24, September 4, October 9, 24, November 2, 9, 1867. Most of Cloud's articles were entitled "The Industrial capacities of Alabama." He advocated immigration, the development of the State's agricultural and industrial resources by planning through a commissioner, and the establishment of the Agricultural and Mechanical school provided for by the Morrill Act as soon as Alabama was back in the Union.

[117] *Journal of the Convention of 1867,* 175.

[118] *Ibid.*

[119] In addition, ordinances were passed by the convention providing for the pay of the convention, relieving Negroes from charges of bigamy, requiring whites to turn over property being held in trust to Negro churches, staying the collection of debts and providing for insolvent debtors, declaring all debts made for the purchase of slaves absolutely void, and many others. The Conservative press was

Although each article had been adopted earlier, the convention voted on the constitution as a whole. The final vote showed considerable opposition against the document. Only sixty-seven of the one hundred members of the convention voted for the constitution; nine voted against it and twenty-four were absent or did not vote.[122] All of those voting against the constitution except Latham, a Negro, were Scalawags and most of those absent and not voting were Scalawags.

In summary, the Constitution of 1868 was a break with Alabama's constitutional past in regard to the new articles on education, women's rights, industrial resources, militia, corporations, and exempted property.[123] The stamp of the Carpetbagger was also evident in the creation of such new offices as lieutenant governor, commissioner of immigration, and the centralized Board of Education.[124] The articles on the bill of rights, the legislative, the executive, and the judicial branches of the government were very similar to those articles in former Alabama constitutions, except the latter two were more democratic in that they provided for popular election of all officials. Nevertheless, the election by the people of all executive and judicial officers had been portended when by amendment in 1850 the people began the election of circuit and county judges, and when in the eighteen fifties widespread demand developed for the election of all executive and judicial officers by the people. Newly created constitutional officials, such as commissioner of industrial resources, superintendent of education, and members of the Board of

---

highly critical of the convention's ordinances of a legislative nature. An ordinance providing that ex-slaves should be paid wages by their fromer masters from the date of the emancipation proclamation to the end of the war failed of passage. The convention petitioned Congress to repeal the "cotton tax." The convention held a caucus, turned itself into a nominating convention of the Republican party and nominated candidates, including members of the convention itself, for all state offices. The Selma *Times and Messenger,* February 28, 1867, declared that fifty-six of the convention's one hundred members were candidates for county, state, or federal office. See *Congressional Record,* 40 Cong., 2 sess., 1818, for the names of the fifty-six and the office each wanted.

[120] *Journal of the Convention of 1867,* 218, 252.

[121] *Ibid.*

[122] *Ibid.,* 240. The New York *Times,* December 5, 1867, on the day before the adjournment, reported that "there will be at least 15 or 20 votes against the constitution on the final vote."

[123] Because of the new articles the Constitution of 1868 was longer than any previous Alabama constitution.

[124] The constitution of 1868 made the superintendent of education a constitutional officer for the first time in Alabama. However the office of state superintendent of education had been created by legislative enactment on February 15, 1854.

Education were also made elective by the people. Suffrage and citizenship rights were extended to the Negro, but at the same time whites were disfranchised. The new constitution was liberal in providing for the whole population as the basis for representation instead of the white population. A democratic public school system was established; the rights of women were given constitutional guarantee; imprisonment for debt was abolished; and the property of the poor man protected from sale for debt by homestead and personal property exemptions.

No branch of the government gained power in this new constitution. The legislative branch was shorn of power by placing additional constitutional restrictions on it and the loss of its powers to appoint executive and judicial officials. The creation of a rival legislative body, the Board of Education, with power to enact all laws in the field of education also limited the power of the legislature. The executive branch was not given additional appointive or legislative power and the governor's pardoning power was limited. It might even be argued that the power of the judiciary was limited by the convention, since they were now directly responsible to and elected by the people. Except for those proscribed, the people *en masse,* white or black, educated or uneducated, were the source of all power under this new constitution. It is worth noting, too, that especially the new sections of the constitution reflect the urban-industrial background of the Carpetbaggers and that constitutional changes were made by this convention which were to be permanent.

CHAPTER X

RATIFICATION OF THE CONSTITUTION OF 1868

The decision as to whether the Constitution of 1868 should be submitted to the people did not rest with the convention, for the Reconstruction Act of March 2, 1867, required that it be ratified by popular vote.[1] However, the convention adopted an ordinance providing for submission on February 4, 1868; the election of all county, state, and federal officials was to take place at the same time.[2] General Pope had urged that the two be combined in order to bring out a large vote on ratification and hasten the readmission of the state.[3] The convention adjourned on December 6, 1867, and General Pope issued a military order setting the date of the election "February 4, 1868, and continuing two days."[4]

Scalawag opposition to the constitution had coalesced during the closing days of the convention. James P. Stow, Scalawag, voted for the constitution but entered his protest against certain sections of the document.[5] A group of Scalawags and one Negro, called "protesting Republicans" by the Conservative press, refused to vote for the constitution and proclaimed through their leader, Henry C. Semple, that a government framed upon the provisions of the new constitution would "entail upon the people of the State greater evils than any which threaten them."[6] In an Address to the People, thirteen protesting delegates declared that they had joined the Republican party because they thought that the acceptance of the Congressional Plan of Reconstruction was the only hope for the rehabilitation of the state. Now that the Republican party in the state had broken its pledge by going beyond Congressional Reconstruction they were leaving the party. The signers declared that they could not support the new constitution because it did not separate whites and blacks on common carriers, nor in the public schools, nor did it provide against the intermarriage of the races. The lack of these constitutional prohibitions will "cause the abasement and degradation of the people of this State, and finally . . . beget a mongrel race, as little capable of progress or improvement as the unhappy people of the West India Isles. . . . We know not what fate may be in store for us, but it can scarcely be worse than that which we shall bring on ourselves by aiding in carrying this constitution into effect."[7]

---

[1] Fleming, *Documentary History of Reconstruction,* I, 402.

[2] *Journal of the Convention of 1867,* 267.

[3] New York *World,* November 8, 1867; New York *Times,* September 6, 1867.

[4] General Order 101, December 20, 1867, in Selma *Daily Messenger,* December 31, 1867.

[5] Stow protested against further disfranchisement of whites, the convention's failure to provide for separate schools, and the oath which bound one never to deny the Negro the right to vote. *Journal of the Convention of 1867,* 242.

[6] *Ibid.,* 240. The convention allowed only those nine delegates voting against the constitution to enter a protest in the *Journal.* Twenty-four were absent and not voting. The Selma *Daily Messenger,* December 7, 1867, recorded the names of fourteen members who signed the protest for the *Journal.* In a letter to the press, George W. Graves related the story of organized opposition within the convention to the constitution. He wrote: "Finding that we could not endorse the work of the convention without aiding in the degradation of our own race, which all nature and our instincts forbade, seventeen of us met a few nights before the convention adjourned, and appointed a committee to draw up a protest; but at our second meeting, we concluded to enter a short protest, and publish an address through the newspapers." Selma *Daily Messenger,* December 19, 1867.

> The constitution adopted by the convention [the Address declared in regard to the suffrage] violates the conditions of the formation of the Republican party in Alabama, by transcending the requirements of the reconstruction acts, and adding features of proscription and disfranchisement not found in those measures. . . .
>
> The evils of universal suffrage may become intolerable, but [one] must swear, that he will endure them, without even a peaceable and constitutional effort at amelioration. . . .
>
> A close observation of the course of the convention has demonstrated to us; that under the proposed system of universal suffrage, the political power of the blacks is coveted by a set of political adventurers, having no interest in common with our people, as a weapon of offense, to be wielded by them, to accomplish their own selfish schemes of personal aggrandisement, and that this race will readily surrender to the arts and intrigues of such designing knaves as will flatter their vanity, and encourage them in the jealous hate of the white inhabitants of the State.[8]

The "protesting Republican" delegates and their followers now joined the Democratic or Conservative party in a crusade against the new constitution. This Conservative party, as the Democrats now called themselves, was reorganized in Alabama in August, 1866. General James Holt Clanton, a former Whig and opponent of secession in 1861, became chairman of its state executive committee.[9] Throughout 1867 the party leaders found it difficult to arouse the people from the lethargy and despondency brought about by the loss of the Civil War and its aftermath. Many of the whites were disfranchised and many others felt that it was useless to oppose the Radicals. Clanton called a convention of the party to meet in September, 1867, but only thirteen counties out of sixty responded by sending delegates. Eighty-seven delegates came to Montgomery but sixty-two of these were from five surrounding counties.[10] Nevertheless, the work of the constitutional convention of 1867 presented the leaders with many issues around which the party might be rebuilt, and reaction of the Conservative executive committee was almost immediate. Before the adjournment of the Radical convention, Clanton called a mass meeting in Montgomery, which was addressed by four of the "protesting delegates" and John Forsyth, editor of the Mobile *Register*.[11] Forsyth played a major part in the campaign against the constitution. The Mobile *Nationalist,* Radical newspaper, referred to him during the campaign as "the leader of the Southern Democratic party."[12] At the Montgomery meeting the executive committee recommended the organization of Conservative clubs throughout the state. All friends of the white race were urged to make every effort to defeat the constitution. Conservative mass meetings followed in Mobile, Selma, Tuscaloosa, Huntsville, and at many county seats.[13] On these occasions, John Forsyth, John Tyler Morgan, Joseph Hodgson, editor of the Montgomery *Mail,* James Holt Clanton,[14] Alexander White, or Richard Wilde Walker spoke against the constitution.[15] These men and many others spent much of their time in December and January organizing the people. Lewis E. Parsons, who had been the agent of the Conservatives in Washington for about a year, came back to Alabama and entered the campaign against the constitution.[16] Daniel Pratt, Alabama industrialist,

---

[7] An Address to the People, Montgomery *Daily Mail,* December 11, 1867.

[8] *Ibid.*

[9] For an account of the reorganization of the Democratic or Conservative party see Huntsville *Advocate,* August 8, 1866. The *Advocate* said that all those appointed to the executive committee were Douglas or Bell men in 1860 and were opposed to the secession of the state in 1861. "Original secessionists seem to have been generally excluded" from positions of importance in the party. See Allen Johnston Going, *Bourbon Democracy in Alabama, 1874-1890,* 2, for another account of the reorganization of the Democratic party in Alabama.

---

[10] Montgomery *Weekly Advertiser,* September 6, 1867. The *Advertiser* said that the meeting was "a failure in every essential particular."

[11] *Ibid.,* December 6, 1867; New York *Times,* December 7, 1867.

[12] Mobile *Nationalist,* February 6, 1868.

[13] Montgomery *Daily Mail,* December 7, 11, 14, 17, 21, 27, 1867, January 28, 1868; New York *Times,* December 7, 31, 1867; New York *World,* December 20, 1867, January 7, 1868; Selma *Daily Messenger,* December 11, 1867, January 5, 7, 10, 15, 16, 17, 18, 26, 30, 1868; Selma *Times and Messenger,* February 2, 1868.

[14] Clanton fixed the first Monday in January, 1868, as the day for founding Conservative clubs in all counties and refused to let any Conservative candidates enter the contest for county, state, or federal office against the Radicals in anticipation of the Conservative policy of defeating the constitution by abstaining from voting. Montgomery *Daily Mail,* December 21, 1867; Selma *Times and Messenger,* February 2, 1868.

[15] Others who joined in the campaign against the constitution were Judge Thomas A. Walker, John T. Heflin, Samuel J. Reid, Robert McKee, and all the protesting delegates.

[16] The Selma *Daily Messenger,* January 25, 1868, said that "no one of our fellow citizens is better prepared to advise us than Governor Parsons, whose residence in Washington during the past year, intimacy with the leading Democrats in Congress, and relations with the President, enable him to have in consideration of the dangers and duties of this hour information more particular and a knowledge more general than is possessed by any other Alabamian."

J. L. M. Curry, and Benjamin Fitzpatrick each condemned the Radical convention and constitution in newspaper articles or speeches.[17]

> I can scarcely conceive [Fitzpatrick declared] of a greater calamity to our people than the adoption of this constitution. It gives all the former male slaves . . . of twenty-one years of age in the State the right to vote, and takes the right away from thousands of white men. . . . I am disfranchised by this constitution, now submitted for the approval of the people. I have remained at home a quiet peaceable citizen ever since I left the Senate, but I can vote neither for or against the constitution though all the slaves I formerly owned, who are twenty-one years of age are allowed to vote.[18]

The Alabama constitution was the first of the Reconstruction constitutions completed and submitted to the people. The Radicals in the Alabama convention, having failed to secure a clause in the State constitution disfranchising those who refused to vote on the constitution, petitioned Congress to so amend the Reconstruction acts that the constitution might be adopted by a majority of those voting instead of a majority of the registered voters.[19] The House of Representatives did pass such an amendment to the Reconstruction acts, but the bill was held up in the Senate until after the Alabama election.[20] In Alabama, Conservative newspapers were advocating a policy of not voting in the election before the adjournment of the convention and were almost unanimous in favoring such a policy thereafter, provided Congress did not change the law.[21] As any decision would have to be made very late because of this danger, Clanton called a conference of Conservative leaders to meet in Montgomery on January 14, 1868, three weeks before the election.[22] At this conference a committee reported in favor of "not voting at all in the election" since Reconstruction legislation "cannot now be amended over the President's veto before the 4th day of February."[23] Eighty-two prominent Alabamians, including ex-governors, ex-United States representatives and senators, lawyers, judges, and editors, adopted an address to the people setting forth the reasons for this course of action.

---

[17] Montgomery *Daily Mail,* December 19, 21, 1867; *Daily State Sentinel,* January 13, 21, 1868.

[18] Montgomery *Daily Mail,* December 27, 1867.

[19] *Journal of the Convention of 1867,* 243; New York *Times,* November 27, 1867. The Second Reconstruction Act also required that "at least one half of all the registered voters" participate in the election which seems meaningless since a majority of all registered voters was required for adoption. See Walter L. Fleming, *Documentary History of Reconstruction,* I, 416.

[20] Selma *Times and Messenger,* March 19, 1868; Fleming, *Documentary History of Reconstruction,* I, 418.

[21] Selma *Weekly Messenger,* November 9, 1867. The Selma *Daily Messenger,* January 22, 1868, gives an account of a controversy between itself and the Mobile *Tribune* as to which first suggested the policy of not voting.

[22] Montgomery *Daily Mail,* December 21, 25, 1867. This date was chosen also because a session of the district court of the United States was scheduled for that date in Montgomery and "many prominent men from different portions of the state will be in attendance."

[23] Selma *Daily Messenger,* January 16, 25, 1867. This committee was composed of Samuel Farrow Rice, ex-Governor Andrew Barry Moore, ex-Senator Benjamin

> By the law of Congress as it now stands, [the Address maintained] a majority of the state must vote in the election, or the constitution is not adopted. There are about 167,000 registered voters in the State, so that it will require 84,000 votes to adopt the constitution.
>
> We could not, under the unfair influences arrayed against us, reasonably hope to secure more than 84,000 votes against the Constitution, and unless we do we would not accomplish more by voting than we would by refusing to vote. Then the most certain way of defeating the Constitution as the law now stands is to refrain from voting.
>
> But, in the event the law is changed by Congress, and it is enacted that the majority of the votes cast shall decide upon the adoption or rejection of the Constitution, the Congress will then have been forced to a departure of the law which it has ordained and the rule which it has presented for itself and the people of the State, in determining whether this Constitution should be the Constitution of Alabama, and will be compelled to exhibit to the world the fact that the Constitution they impose is not the Constitution of the people of Alabama, but the Constitution of a minority of the whole people, and that, a Negro minority. . . .
>
> And even our voting down the present proposed Constitution would avail nothing with such a Congress; but on the contrary, such a Congress would invent and devise and employ the means they thought effective to carry into effect its hostility to the white race of the South.
>
> It must be kept steadily in mind, that the Reconstruction measures of Congress prove their authors to be not so much the friend of the negro, as the enemies of the white race; and that this pretended friendship for the negro, as well as this actual enmity toward the whites, stands upon the known fact, that the whites of the South never can be made the tools of Radicalism, but the negroes may be made such tools.[24]

The Address further contended that the constitution could not be defeated by a policy of voting because the Negroes would vote for it in a body, the registration and election officials are controlled by our enemies, the present Congress lacks integrity, and there is no hope of relief from the Supreme Court. Moreover, by a policy of voting, the Address pointed out, the whites would commit themselves to the outcome of the election.

Fitzpatrick, William Hodges Barnes, Richard Wilde Walker, Aaron Burr Cooper, and Alexander White. The committee at first decided to try to defeat the constitution by voting, but was persuaded to follow a policy of abstinence on the advice of ex-Governor Lewis E. Parsons, who had just returned from Washington after conferences with President Andrew Johnson and Democratic leaders. See testimony of James H. Clanton in the Ku Klux Report, June, 1871, *Senate Reports,* 42 Cong., 2 Sess., no. 22, VIII, 227.

[24] Selma *Daily Messenger,* January 25, 1868. See also Montgomery *Daily Mail,* January 25, 1868.

> Touch not, handle not, the unclean thing [the Address pleaded] and deliverance full and complete will soon come. There is a power in this country mightier than that of Congress; a power which raises up and pulls down at its will; a power whose command is the law to all, whose voice is the voice of God. It is the voice of the people. We can trust in them—Twenty millions of whites, North and West, will never permit 8,000,000 of whites at the South to be enslaved by 4,000,000 of negroes. . . .[25]

After the Montgomery conference, the policy of not voting became the official policy of the Conservatives, and was supported by the Conservative press and leaders with scarcely a dissenting voice.[26]

The Conservative press played a major part in the campaign against the constitution and as the Radicals realized was the major obstruction to their complete control of the State.

> One of the chief obstacles in the way of a peaceful and effectual reconstruction [declared the Radical *Mobile Nationalist*] is to be found in the southern press. A large majority of the papers in the seceded states are owned and edited by men who are placed under a political ban by the action of Congress, or by those whose sympathies are with that class in the South, who are bending every energy to thwart Congress in its efforts to restore the Union. These men with but few exceptions, are the same class which controlled the Southern mind in 1861. . . . It is a fact not to be disputed that these men now control a large majority of the white people of the South.[27]

All newspapers in the state were Conservative, except Albert Griffin's Mobile *Nationalist,* John Hardy's Montgomery *Daily State Sentinel,* William Bibb Figures's Huntsville *Advocate,* and about twelve Radical county newspapers scattered over the state.[28] Under General Order No. 49,[29] issued by General Pope, Radical newspapers received all the government printing and were thus able to maintain themselves.[30]

---

[25] Selma *Daily Messenger,* January 25, 1868.

[26] Several editorials did appear questioning whether the people could be rallied around a negative policy of not voting, but Clanton replied that it was an active not a negative policy, since all Conservatives possible were to get on registration lists which had been reopened in anticipation of the election and each Conservative was to see how many voters he could keep from the polls during the election. Montgomery *Daily Mail,* January 25, 1868.

[27] Mobile *Nationalist,* January 30, 1868.

[28] The New York *World,* January 3, 1868, declared that there were ten weekly Radical newspapers in Alabama, but the Selma *Daily Messenger,* December 11, 1867, said twelve or thirteen. The Livingston *Messenger,* Tuscaloosa *Reconstructionist,* Tuscumbia *North Alabamian,* Moulton *Union, The Tallapoosian, The East Alabama Monitor, The Alabama Republican,* and the Wetumpka *Elmore Standard* were Radical newspapers. *Journal of the Convention of 1867,* 242.

[29] General Order No. 49 was issued August 12, 1867, and printed in the Selma *Weekly Messenger,* November 9, 1867. Public printing was to be given "to such newspapers and such only as have not opposed and do not oppose reconstruction under the acts of Congress." The Alabama legislature of 1868 also passed a law to this effect. Mobile *Nationalist,* September 13, 1868.

[30] The papers receiving this subsidy styled themselves "official journals of the

John Forsyth's Mobile *Register,* William Wallace Screws's Montgomery *Advertiser,* Robert McKee's Selma *Messenger,* Joseph Hodgson's Montgomery *Mail,* Ryland Randolph's Tuscaloosa *Monitor,* Henry St. Paul's Mobile *Times* and many other newspapers attacked the convention and the constitution with great vigor and vehemence. They referred to the convention as the "so-called convention," "the Black Crook Convention," "Swayne's menagerie," "the unconstitutional convention, " "the Black and Tan Convention," "Pope's convention," "the circus," "the bogus convention," "that sweet scented body," and to the constitution as "the bogus constitution," "the so-called constitution," "Pope's constitution," "the unconstitutional constitution." The Montgomery *Advertiser* said that the convention was a "flock of crows and vultures now roosting in the capital and whetting their beaks in expectation of their filthy feast on the dead body of the State."[31] And the same paper said that the preamble of the new constitution ought to read:

> We negroes and mean whites, representing the negroes and about two thousand mean white men in the state of Alabama, in order to establish injustice, insure domestic confusion, provide adventurers with offices, promote the general ruin, and secure to ourselves and possibly our children the right of living without labor by plundering honest people of their property and invoking the power of the devil and the protection of the military—do present this bogus constitution to our masters who have tempted us to do their dirty work.[32]

In a less violent mood the *Advertiser* said that "constitutional conventions in other days were grave deliberative bodies. . . . The convention of today is composed of men utterly unlettered; of men who if some of them read and write, know nothing of the governments that have been made or the modes and causes of their decay; of criminals, swindlers that have escaped justice; demagogues in search of place and power; negroes of the lowest and meanest; of the partisan officials of the new Freedmen's Bureau. What are these but . . . grave caricatures of the constitutional convention?"[33]

An editorial in the Selma *Times and Messenger* is typical of many in the Conservative press:

> Convened under the reconstruction acts by a bare majority of the registered voters, composed (we speak deliberately and advisedly) in good part

---

United States government." They were paid weekly for printing the new constitution. The New York *World,* January 3, 1868, recorded that "ten little obscure weekly Radical newspapers in Alabama were paid $125 per week for four successive weeks, by the Alabama Black and Tan convention, for publishing the so-called constitution."

[31] Montgomery *Weekly Advertiser,* December 10, 1867.

[32] *Ibid.,* December 17, 1867.

[33] *Ibid.,* December 3, 1867.

> of negroes who had never read and could not read the Constitution of the United States, or the constitution of any one of the States, deserters from the Confederate service, thieves, defaulters, Bureau men without residence, and mere adventurers without acquaintance or domicile in the State, the convention went beyond the requirements of the reconstruction acts, and beyond anything that had ever been proposed in Congress by the most vindictive member thereof, among other things in proclaiming the social equality of the races, in providing for mixed schools sustained at public expense, and particularly in exacting a test oath of electors which no honest white man from the North or the South can or will take.[34]

Negro suffrage, proscription of the whites, the failure of the new constitution to provide for segregation on common carriers and in public places, the omission of any provision for segregation in public schools, and the lack of any prohibition against intermarriage of the races were attacked with equal bitterness by the Conservatives, as all were issues on which the whites could be easily aroused.

The issue in the convention had been proscription of the whites and not Negro suffrage but the Conservatives attacked each with equal vehemence. They denounced the enfranchisement of the ignorant Negro and the proscription of the educated whites. They pointed to the recent defeat of state constitutional amendments to grant the Negro the right to vote in several northern states.[35] The whites of the North, declared the Conservatives, denied the Negro the right to vote at home but forced Negro suffrage upon the defenseless people of the South in order to keep the Republican party in power.[36]

> If the people of the Northern states [argued Ex-Confederate Senator Richard Wilde Walker] decline to confer the right of suffrage upon a comparatively insignificant number of colored men, most of whom were born free and have had the benefit of some education, the people of the Southern states may well be excused if they hesitate to consent to the immediate enfranchisement of the colored population of those states, formidable in numbers as that population is, and consisting almost entirely of freshly emancipated slaves, destitute of education and unprepared by any training or experience for the discreet exercise of the political privileges of citizenship. . . . A just and generous spirit may revolt at the idea of forcing the South to accept in large mass that which the North rejects in minute quantities.[37]

---

[34] Selma *Times and Messenger,* February 2, 1867. Ex-Confederate Senator Richard Wilde Walker said of the new constitution: "The rule of a military commander with all its known evils and possible contingencies, has less of terror for the people of Alabama than the misrule of a government founded upon such a Constitution. . . . Our military are of our own race." Selma *Messenger,* January 15, 1868.

[35] Huntsville *Advocate,* January 14, 1868; Selma *Messenger,* January 15, 1868. Illinois rejected a Negro suffrage amendment in 1862, Connecticut and Wisconsin in 1865, and Ohio in 1867. See Howard Kennedy Beale, *The Critical Year,* 182-183.

[36] Montgomery *Daily Mail,* December 7, 14, 17, 1867, January 25, 1868.

[37] Selma *Messenger,* January 15, 1868. The Montgomery *Weekly Advertiser,*

A letter from an Ohio friend of Andrew J. Applegate, Radical candidate for lieutenant governor, said: "Negro suffrage is not necessary to insure loyal government in Ohio and may be in Alabama. Such was the reasoning of many Union men here who voted against the constitutional amendment,[38] but who support the reconstruction measures of Congress."[39] The Montgomery *Daily Mail* charged that Negro suffrage would "give the State government of Alabama and the municipal governments of all but six counties of the state to Negroes."[40] "It is enough to say in total condemnation of this Radical invention [declared the Montgomery *Advertiser*] that it rests on the rotten foundation of universal negro suffrage; and that it was intended by its designers in order to accomplish purely party and personal objects to constitute, and does actually constitute, the negroes of Alabama, the active and permanent elective power of the State."[41]

The Conservatives argued that the suffrage article of the new constitution proscribed forty thousand of Alabama's best citizens.[42] The section in the suffrage article disfranchising those guilty of treason would disfranchise by their own confession all men worth $20,000 who had requested pardon under Johnson's amnesty proclamation.[43] The Montgomery *Daily Mail* estimated that this alone would disfranchise "not less than ten thousand of our best citizens."[44] Many more would be disfranchised, said the editor, because only "the lowest classes who care nothing for the sanctity of an oath nor the liberty of thought" would take the oath to forever uphold Negro suffrage even though it proved intolerable.[45] The Selma *Daily Messenger* declared that the guarantee to the Negro was much broader than suffrage alone. The oath would disfranchise "all men who would not swear to accept now,

---

November 19, 1867, said: "Seeing that the people of the Northern States from Connecticut to Kansas, repudiate Negro suffrage, how . . . does it strike fair minds for a Congress in which the North alone is represented, to force negro suffrage and negro supremacy upon the ten Southern States which are refused representation?"

[38] This was an amendment to amend the state constitution of Ohio in order to permit Negro suffrage.

[39] The letter is printed in the Huntsville *Advocate,* January 7, 1868, but bears no signature.

[40] Montgomery *Daily Mail,* December 11, 1867.

[41] Montgomery *Weekly Advertiser,* December 17, 1867.

[42] Montgomery *Daily Mail,* December 11, 1867; Montgomery *Weekly Advertiser,* November 19, 1867; Selma *Daily Messenger,* November 11, 1867, January 15, 1868.

[43] Selma *Daily Messenger,* November 23, 1867. The New York *Times* said that "it is believed that all those persons who come within the twenty thousand dollar clauses of President Johnson's Amnesty Proclamation, and against whom proceedings were instituted in the State District courts, who, on being pardoned by the President, had to appear in court, and enter the plea of pardon and guilty are disfranchised by the New Constitution."

[44] Montgomery *Daily Mail,* December 11, 1867.

[45] *Ibid.*

and maintain hereafter, the civil and political equality of the black and white races—who will not swear that now and forever hereafter negroes should be held to be the equals of white men in the jury box, at the polls, in the halls of the legislature, on the judge's bench, and wherever political rights and privileges are to be exercised or political duties to be discharged."[46]

No part of the new constitution, except the suffrage article, received more adverse criticism than the article on education. The Montgomery *Daily Mail* declared:

> One legislative body, not able to do all the harm to the white race, desired by the majority of the convention; an additional one, nicknamed the Board of Education, is created, and armed with power to force all white children, to go into all the free public schools upon terms of social equality with all sorts of negro children or else to surrender the schools as a monopoly to the negroes. These schools to be the nurseries of such social equality, or the monopoly of the negroes. Enormous amounts of public property and taxes are dedicated to the schools, and even the helpless, non-voting insane people admitted to the Alabama Insane Hospital, robbed of their existing support, to swell the influence of these schools.[47]

Opponents of the new constitution charged repeatedly that the defeat by the convention of the amendments to provide for separate schools, to segregate the races in public places, and to prohibit the intermarriage of the races, meant social equality, miscegenation, and Negro supremacy.[48] The convention's militia system was attacked because there was no provision for segregation and because the militia would be large and made up almost entirely of Negroes.[49] "Conservatives declare [said the New York *Times,* that] this measure places the State under a military dynasty similar to Brownlow's and say its expenses will necessarily increase the rates of taxation," since there will be about 137 companies of Negro troops with Negro or Carpetbag officers.[50]

---

[46] Selma *Daily Messenger,* November 23, 1867.

[47] Montgomery *Daily Mail,* December 25, 1867. There was no constitutional provision for a poll tax before 1867 but such a tax had been levied for the support of the Insane Hospital. The Mobile *Times* declared that "The children of the State (States have many children) are to be morally and religiously educated in common, like young Spartans, and to learn to love each other and practice mutual charity; they are to be raised in common, and to know no distinction even though God and nature should have made the most striking ones between them." Mobile *Nationalist,* January 23, 1868, quoting the Mobile *Times.* "There is nothing needed [declared the Montgomery *Advertiser*] but a perpetual black man as Superintendent of Public Instruction, President of the 'Board of Education' and President of the 'Board of Regents' and personal 'Supervisor of all the Schools' to make this tremendous and astonishing negro educational machine the eighth wonder of the world." Montgomery *Weekly Advertiser,* December 17, 1867.

[48] Montgomery *Daily Mail,* December 7, 11, 14, 17, 22, 27, 1867; Selma *Weekly Messenger,* January 15, 29, 1868.

[49] Montgomery *Weekly Advertiser,* November 26, 1867; Selma *Times and Messenger,* March 21, 24, April 21, 1868. The Montgomery *Weekly Advertiser,* December 17, 1867, said that "the chief objection to this article apart from the terrible abuses of which it is susceptible under the present circumstances is its miscegenating character. It mixes up the whites and the negroes in an incongruous manner and will make a hard day's muster on a hot day in summer, a doubtful recreation."

Opponents of the new constitution assailed the creation of new offices by the convention. The reason the office of lieutenant governor "has been thrust upon the taxpayers, [declared the Montgomery *Advertiser*] is easily understood. Here is a position of some dignity, and with a fine salary attached, for one of the mean white men. In the distribution of spoils it should have by rights been given to a black man. But a poverty stricken people may well complain when called on for taxes to support some idle vagabond in an expensive office that the experiences of the State have demonstrated to be useless."[51] The Conservatives did not attack the theory of popular election of officials, but pointed to its practical effect, which was to give the election of all officials to the ignorant Negro.[52] They prophesied that the election of judges by the ignorant Negro voter would abolish law and order and make the administration of justice a farce.[53]

They flayed the new constitution because "it places to a great extent the property of the country at the mercy of non-property holders—a lamentable condition for any people."[54] "Stated broadly, [said Robert Wilde Walker] the theory of this constitution is that the power of making the laws shall be confided to those who have the least to be protected by the laws, and that the right to levy the taxes shall be bestowed on those who have no taxes to pay."[55] Conservatives argued that the amount of taxation made necessary by the new constitution would ruin the property holders of the state. The tax burden would be "annually from one million five hundred thousand to two million dollars, a sum which the taxpayers of the State are wholly unable to meet in their present impoverished condition."[56] "It imposes in various ways an amount of taxation upon real property that would crush the industrial life blood out of Alabama," declared the Montgomery *Advertiser*.[57]

The opposition charged that the stay laws of the late convention were passed as a bribe to secure ratification of the constitution. One editor maintained that "the non-resident knaves in the convention, believing the people of Alabama to be as short-sighted and corrupt and shameless as themselves, have enacted it as a bribe to debtors to vote on the ratification question."[58] He further held that: "Stay laws and bankrupt ordinances and other enactments impairing the obligation of contract have already broken down credit to a very great extent. Should these ordinances be ratified by the voters under the military bills and confirmed by Congress, no man of moderate means will again be enabled to make business transactions on time for there will be no legal means of enforcing contracts."[59]

---

[50] New York *Times*, December 1, 1867.

[51] Montgomery *Weekly Advertiser*, December 17, 1867.

[52] Montgomery *Daily Mail*, December 7, 11, 14, 1867; Montgomery *Weekly Advertiser*, December 3, 1867. The *Advertiser*, December 17, 1867, said that "all the State offices are filled by popular election—that is mean white men are to be assigned the enjoyment of salaries, for which the property of the legal voters is heavily taxed by the partiality of a mass of ignorant negroes."

[53] Montgomery *Daily Mail*, December 7, 14, 1867.

[54] *Ibid.*, December 27, 1867.

[55] Selma *Daily Messenger*, January 15, 1868.

[56] Selma *Times and Messenger*, March 24, 1868.

[57] Montgomery *Weekly Advertiser*, December 3, 1867.

The popular homestead exemptions contained in the new constitution received little criticism from the Conservatives, but at least one speech was made against them. The Montgomery *Daily Mail* paraphrased Whitley Thomas Ewing as saying in a speech at Montgomery that:

> He had come from North Alabama where the people, many of them were at the point of starvation, all of them in need of many of the comforts of life. They wanted good faith and credit to secure commercial confidence and obtain advances to help them in farming; but this constitution destroys all commercial credit and by exempting $3,000 from liability for debt, keeps credit from the poor man and snatches bread from the mouth of his wife and children. It was an infamous measure, designed to protect the adventurer who hoped to get possession of the plantations, and really destroying the credit of the laboring men of the State.[60]

During the campaign for the constitution, the Republican party maintained a strong position in Alabama.[61] The enfranchisement of the Negro, disfranchisement of many whites, support from the Freedmen's Bureau and Union League, the apathy of Conservative voters, and the general discredit which had befallen Conservative leaders after the war, all strengthened the Republican position. The uneducated Negro could not be reached effectively by the Radical press, but Radical leaders, including the fifty-six members of the convention nominated for office, spoke often at Republican rallies in favor of the constitution.[62] The Republican party was very strong in the Black Belt and the Tennessee, Tombigbee, and Alabama River valleys where there was a large Negro population. The "hill counties" with few Negroes were practically ignored by the Radical leaders.[63]

---

[58] Selma *Daily Messenger,* December 7, 1867.

[59] *Ibid.,* December 14, 1867.

[60] Montgomery *Daily Mail,* December 7, 1867. The Montgomery *Weekly Advertiser,* December 31, 1867, printed a summary of the objections of the Conservatives in Alabama to the new constitution taken from the Louisville *Courier-Journal.* The *Journal* said that the effect of the Radical constitution in Alabama would be:

To give the political power in Alabama into the control of Negroes.

To surrender the municipal governments of the radical counties in the State to the Negroes.

To establish public schools in which white and Negro children must sit side by side.

To exclude from the polls forty thousand of the state's best citizens.

To permit no white man to vote unless he swear never to change the basis of suffrage, whatever the calamities the proposed basis may bring upon the people.

To establish a militia system by which one-tenth of the people shall rule nine-tenths by violence.

[61] The Republican party in Alabama had been organized in 1866.

The Radicals appealed first of all to Negro voters. The Negro was told that the defeat of the constitution meant his re-enslavement. "Adopt the constitution to protect the rights of the colored men" became the theme of the Republican campaign.[64] Ratify the constitution so as to gain citizenship rights and all civil rights and privileges enjoyed by any other class of men, Albert Griffin advised the Negro voters. He further asserted:

> The white people of the State have a great deal depending on the result of the pending election but the interest of the colored voter in it is of transcending importance. The citizenship of the white man is not in any way dependent upon the ratification or rejection of the constitution, but that of the colored man is to be decided by the votes now being cast.
>
> Adopt the constitution and the colored man is and will always be an enfranchised citizen of the State of Alabama. All avocations, honors, and emoluments will be open to him. The State and the community will assist him to rise, instead of striving to keep him in degradation. Officers of the law will protect instead of oppressing him in all his various interests, and if he does not rapidly improve in social and political well being it will be his own fault. . . .
>
> Ratify the constitution and secure the power to protect yourselves through all coming time, and spend at least one day in inducing others to do the same. Will you do it? Or, in other words, are you men—or still slaves?[65]

The Huntsville *Advocate* declared:

> While white men claim for themselves the right of suffrage. as a means of protection from oppression, they must not seek to deprive the black man of the same right, for the same purpose. . . . That which is objectionable in the constitution proposed to the people for ratification, may be altered or amended, but one cannot be adopted entirely subversive of the rights of so large a class of citizens as the Negroes form in the Gulf States.[66]

The Mobile *Nationalist* appealed to the Negro vote as follows:

> Do you wish to see your race prospering? If yea, then devote every spare moment of time between now and Friday night in going from house to house, and shop to shop, urging every man to do his duty by voting for

---

[62] Selma *Daily Messenger,* December 29, 1867; Mobile *Nationalist,* January 30, 1868; Huntsville *Advocate,* January 14, 17, 24, 1868.

[63] Selma *Times and Messenger,* January 10, 1868.

[64] Mobile *Nationalist,* February 4, 1868.

[65] *Ibid.,* February 6, 1868.

[66] Huntsville *Advocate,* January 17, 1868.

the constitution. Insist upon it that they must act like men if they wish to be looked upon as men, and let them know distinctly what you think of those who are afraid to maintain their rights. If the colored women of Mobile will properly exert themselves there will not be twenty colored votes uncast on Friday night.[67]

During the campaign for ratification of the constitution the *Nationalist* appealed to the Negro vote by featuring on its front page such lines as: "If you are an American citizen, vote for the constitution"; "If you love liberty, vote for the constitution"; "Every vote is another nail in slavery's coffin"; "Vote for the constitution, vote today"; "If you have the soul of a slave, stay away from the polls"; "Freemen, your country calls! Do your duty and trust in God"; "Those who would be free, themselves must strike the blow"; "Let every man this day show his hand"; and "Let the women mark the men who have not courage enough to vote."[68] The same newspaper declared that "God, who created men, says that He is no respector of persons. Consequently, the Conservatives denounce the Almighty as a Radical, and declare they cannot stoop to associate with him."[69]

The Radicals charged that the Conservatives threatened to discharge Negroes for voting for the constitution and to close the plantations.[70] The *Nationalist* quoted the Mobile *Register* as declaring: "Now, it is the well settled determination of the planters not to work their lands beyond the mere production of food for their own families if the constitution is ratified."[71] In reply the *Nationalist* said:

Let no man, however, be deterred from voting by the fear of being discharged. Labor has to be performed, and the whites who are now here will

---

[67] Mobile *Nationalist,* February 6, 1868.

[68] *Ibid.,* January 23, 30, February 6, 1868.

[69] *Ibid.,* February 6, 1868. The Radicals made frequent appeals to religion in the campaign. The Mobile *Nationalist,* February 6, 1868, asked, "What is the difference between the apostles and the most conservative clergymen? Answer: The former preached peace on earth and good will to men, and sacrificed themselves for the good of others, while the latter preach a war of races and sacrifice others for their own good." The Montgomery *Daily State Sentinel,* January 28, 1868, printed an editorial from the New Orleans *Republican* declaring that Christ and all his disciples were Carpetbaggers because they offered a better way of life to other people. The editor declared "The apostles were 'carpetbaggers.' The earlier popes were 'carpetbaggers.' The best monks were 'carpetbaggers.' Luther was a 'carpetbagger.' Bunyan was a 'carpetbagger.' . . . Wesley was a 'carpetbagger.' Jonathan Edwards was a 'carpetbagger.' And the Puritans from whom he sprang were 'carpetbaggers.' All the best and ablest men in the Protestant and Roman Catholic Churches for centuries past have been 'carpetbaggers.' The history of the church is nothing but a history of 'carpetbaggers.' Missionaries start from London, New York, and Rome and go to the heart of Africa with nothing but 'carpetbags.' . . . 'Carpetbags' contain pure religion, pure philosophy, pure science. In a little 'carpetbag' [are] the spelling book and the Bible . . . [which contain] a magazine more powerful than mountains of salt petre and sulphur. . . ."

[70] The Mobile *Nationalist,* January 30, February 6, 1868.

[71] *Ibid.,* February 6, 1868.

> not do it. Therefore if you should be discharged it but makes room for another man, and in a very little while you may be able to get the situation from which the man who took your place had been discharged.[72]

Although the Republicans appealed to the masses to vote for free public schools, the party was also concerned with quieting the fears of the whites on the segregation issue.

> Almost every person [Albert Griffin stated] who has any education himself—especially in view of the ignorance of most of our voters—believes in public schools. The necessity for education and the inability of the masses to secure it, as matters now stand, is so evident that all but the willfully blind must admit that the subject should be taken in hand by the State. The constitution makes provision for this, but does not, as some assert, require both races to attend the same schools. The provision is that one school must, and more may, be established in each school district. All the details of the system are left to the school board. The sentiment of the convention—of the colored as well as the white members thereof, so far as I know—was unanimously adverse to mixed schools, and it is certain that, as a rule, the races will be kept separate. . . . The point that the Republican Party is a unit upon is that every child in the State must and shall have an opportunity to acquire an education.[73]

The Radicals appealed for the vote of the "poor man" and the "working man."[74]

> But why is the aristocracy opposed [Albert Griffin asked] to the ratification of the constitution? Simply because if it is ratified, every man in the State will hereafter have an equal chance so far as the law is concerned with every other man in the battle of life; because it strikes a death blow at their hopes of being able to live hereafter in idleness. Because it says to them in effect unless you are willing to pay others their own price for doing their work for you, you must do it yourselves. . . . In fact, the constitution was framed by poor men—working men—and was so framed as to give ample protection to the laborer. The members of the convention knew that the rich and powerful can easily take care of themselves, and determined that hereafter in this State the weak should have some protection.[75]

---

[72] *Ibid.*

[73] *Ibid.*, January 23, 1868. John Hardy published many articles and editorials on the proposed school system during the campaign. They show a real and sincere interest in the education of both the whites and Negroes. He discounted most of the claims of the Conservatives that "mixed schools" would be established, but admitted this was a possibility in certain isolated cases. He thought the claims of the Conservatives that they would pay all the taxes to support all the Negro schools very shortsighted. See Montgomery *Daily State Sentinel,* September 4, October 31, December 11, 17, 19, 1867, January 21, 1868.

[74] Mobile *Nationalist,* January 23, 1868; Huntsville *Advocate,* January 31, 1868.

[75] Mobile *Nationalist,* February 6, 1868. An article in the *Daily State Sentinel,* January 21, 1868, was headlined the "Constitution for Farmers, Mechanics, Merchants—Rich and Poor." In the issue of January 24, 1868, John Hardy again exhorted "poor men with families" to vote for the constitution because of relief from debt and the homestead exemption.

The Radicals said that the new constitution exempted the poor man's home from sale on execution, prohibited the garnishment of the laborer's wages, provided state supported schools where the children of the poor might get an education, decreed that no poll tax shall be levied hereafter except for school purposes, abolished imprisonment for debt, and gave women their rights.[76] The Huntsville *Advocate* called on the whites of North Alabama to ratify the constitution in order to make secure homestead exemptions, guarantee the laborer's lien, and give women a constitutional guarantee of their rights.[77]

The Radicals pleaded with the people to ratify the constitution in order to restore Alabama to the Union and end the period of uncertainty.[78] They argued that everyone from farm laborer to business man would be aided by such a move, as the restoration of economic prosperity would follow the readmission of Alabama to the Union.[79] The Huntsville *Advocate* declared:

> Objectionable as were some of the acts of the convention; objectionable as are some portions of the constitution; objectionable as may be some of the nominees for State offices; opposed as we are to disfranchising any of our fellow citizens; anxious as we are to secure equal rights and political privileges to all citizens, can the people afford to continue the present state of disorder, confusion, paralysis and dying by inches?[80]

[76] Mobile *Nationalist,* January 14, 23, 30, February 6, November 1, 1868; Huntsville *Advocate,* January 10, 24, 31, 1868. The Radicals also made capital of the stay law passed by the convention. The Huntsville *Advocate,* January 14, 1868, said: "Many thousands in the state, who make show of opposition to the ratification of the constitution, will be very ready to avail themselves of the provisions therein, for the liquidation of debts. As an illustration of what I say—there are many suits—very many—pending in our courts founded upon written evidence, the consideration of which was the purchase of slaves. Who is there who will not avail themselves of the defense provided by the ordinance of the convention on this subject?" "If the constitution is defeated next week, [declared John Hardy] then the sheriff and constables will commence the work of selling out the unfortunate debtors without exception. These officers, urged on by the creditor class, are now intently working for the defeat of the constitution." Montgomery *Daily State Sentinel,* January 30, 1868. Chairman Benjamin W. Norris of the Republican State Executive Committee issued an "Address to the Laboring Men of Alabama" which featured parts of the new state constitution favorable to them. See *ibid.,* January 16, 1868.

[77] Huntsville *Advocate,* January 31, 1868. The Selma *Times and Messenger,* January 30, 1868, reported that "the hill country is sound to the core" against the constitution. According to the *Daily State Sentinel,* December 18, 1867, Representative Benjamin F. Porter of Monroe County, Alabama, had previously done more than anyone else in the State to secure statutory provisions for women's rights, homestead exemptions and abolition of imprisonment for debt.

[78] Huntsville *Advocate,* January 14, 23, 31, 1868.

[79] The Republican candidate for governor, William H. Smith, pleaded with the people of Alabama to ratify the new constitution in order to develop the mineral resources of the state. If ratified, the new constitution would bring the "iron men, the manufacturing, and the lumber man of the northern states . . . to Alabama," he declared. Address of Honorable William H. Smith, *Daily State Sentinel,* January 17, 1868.

[80] Huntsville *Advocate,* January 10, 1868. The same paper on January 24, 1868,

At a Republican rally in Lebanon, Alabama, declared the Huntsville *Advocate,* all speakers "urged the ratification of the constitution and exhorted the people to adopt it and return to their constitutional relations with the general government, thereby giving permanence and stability to our people, and peace and prosperity to the state."[81]

The Radicals, appealing to the whites, argued that Negro suffrage did not mean Negro supremacy. John Carraway contended:

> The idea that four million colored people, without wealth or education, can become supreme over thirty million whites, with all the wealth, refinement and education of the 19th. century is an absurdity. The colored men themselves have shown no disposition to bring about such a state of affairs in the counties where they have had a numerical majority sufficient to do it. At the election for delegates they cast nine out of ten of all the votes, but instead of choosing nine colored men to one white man to represent them, they sent eight white men to one colored man. Every State officer and congressman (who have been nominated) are white; and this same wise course has been adopted throughout the South. Thus the colored men themselves are repudiating and condemning in the strongest possible manner the villainous, deceiving, political trick called 'negro supremacy.'[82]

The Radicals issued an address to the white people of Alabama in which they attempted to answer some of the objections made by the Conservatives to the constitution. Referring to the test oath, the address asserted:

> The idea most harped upon is that those who take this oath can never vote to change the franchise provision of the constitution. This is an error. An educational test or a property qualification may be prescribed. Indeed, any conceivable change can be made, provided that it apply to white and colored men alike. The sole restriction is as to making 'race, color, or previous condition' the ground or reason of depriving some of the rights that are enjoyed by others. Only this and nothing more. . . . This oath was put in the constitution because the convention knew that one large class of men openly declared their intention of laboring to deprive colored men of their rights as soon as the State should be readmitted, and suspected that a considerable number of those who ostensibly acquiesced in the policy of Congress were secretly resolved to the same course.[83]

Of the Conservative charge that the constitution would establish social equality, the address said:

---

declared: "We have but one fixed idea since the surrender. To get back into the Union in the speediest way and on the best terms that the Government would grant. To this end, we have supported all efforts and propositions emanating from the Government; and we are now doing the same thing. We wish a legal State Government, law, order, peace, prosperity—which can only be secured by accepting and acting up to the laws of the land."

[81] *Ibid.,* January 10, 1868.

[82] Mobile *Nationalist,* February 6, 1868.

[83] *Ibid.,* January 23, 1868. This address was written by Albert Griffin.

> Some men talk as though they believed that the proposed constitution, would, if adopted, establish social equality, whatever that is. Upon this subject I have only to say, read the constitution for yourself, and if you can find it there you have keener eyes than mine. The Republican members of the convention were a unit in favor of allowing every man and woman to choose his or her own society. We did not propose to, and did not, legislate upon such matters.[84]

On January 30, 1868, John Hardy summarized the reasons for voting for the new constitution as follows:

> Do you want Alabama again in the Union? Vote for the Constitution!
>
> Do you want a loyal good government, to protect life, liberty and property? Vote for the Constitution!
>
> Do you want the return of peace, order, and prosperity? Vote for the Constitution!
>
> Do you want the railroads built and manufactories erected? Vote for the Constitution!
>
> Do you want your children educated? Vote for the Constitution!
>
> Do you want time on your old ante-war and war debts? Vote for the Constitution!
>
> Do you want the speedy development of all the resources of the state? Vote for the Constitution!
>
> Do you want capital to come into the State and money in freer circulation? Vote for the Constitution!
>
> Do you want immigrants to buy your land and cultivate the soil properly? Vote for the Constitution![85]

As the campaign neared its end, only the Huntsville *Advocate* among the State's Republican press wavered in its policy of complete endorsement of the constitution. This newspaper served an area predominately white and more loyal in the late war than other sections of the state. But the section was displeased with many decisions of the late convention and William B. Figures, editor of the *Advocate,* finally called for a reassembling of the convention to alter the objectionable clauses "about schools, the franchise, and the registration oath" before submission.[86]

Registration lists were re-opened before the vote on the constitution for the registration of additional voters.[87] Registration in Alabama prior to the election for delegates to the constitutional convention was 165,123. On February 1, 1868, the registration list contained about 170,000 names, roughly 75,000 whites and 95,000 Negroes.[88] Hence, 85,000 electors had to vote in the election in order to meet the requirement of the Second Reconstruction Act that "at least one half of all the registered voters" participate in the election. Moreover, in order to secure a majority of the registered votes as required, at least 85,000 would have to vote in favor of the constitution.

---

[84] *Ibid.*

[85] Montgomery *Daily State Sentinel,* January 30, 1868.

[86] Huntsville *Advocate,* January 10, 24, 31, 1868. As opposition to the constitution gained strength, the Republican Executive Committee itself went on record to the effect that the objectionable features of the constitution would be stricken out by Congress. It said: "Some features of the constitution that have been adopted have provoked severe and general criticism. It is just and proper to remark that enough is now known of the purposes of Congress to assure us that while the State will expect to be admitted promptly, those features will be subjected to complete revision. And it is better far to be admitted now, and with this understanding, than after being tossed about so long, to go to sea again not knowing where we land." *Ibid.,* January 10, 1868.

The election upon the ratification of the constitution was held on the first five days of February, 1868;[89] 70,812 voted for the constitution and 1,005 against it. Neither requirement of the Reconstruction Act had been met. Since half the registered voters had not participated, obviously the constitution did not secure the sanction of a majority of the registered voters. Some 18,553 whites had voted in October, 1867, to hold a convention; only 5,802 voted in February, 1868, for the constitution, and 900 against it. The Conservatives had carried out their policy of not voting with great thoroughness. The bulk of the votes for the constitution came from the "black counties." Some 62,089 Negroes voted for the constitution and 105 against it.[90] In a report to Congress, General George Meade, who had replaced General John Pope as commander of the Third Military District, declared that the constitution had failed under the law because 8,114 more voters would have had to participate in the election to constitute a majority of the registered voters.[91]

Both sides made charges of fraud and irregularities in the election. The Radicals sent Albert Griffin, John C. Keffer, and Benjamin Norris to Washington in order to present their charges to Congress.[92] The

[87] General Julius Hayden, who had replaced General Wagner Swayne in Montgomery removed more than a dozen of the registrars, who were Republican candidates for office under the new constitution. As a result the Radicals accused him of sympathy with the rebels. Mobile *Register,* February 6, 1868; Selma *Times and Messenger,* April 26, 1868.

[88] Fleming, *Civil War and Reconstruction in Alabama,* 539.

[89] Originally, the election was to begin on February 4 and last two days. But at the request of General Grant the time was extended to four days and after the voting started was extended another day, making five days in all. The Selma *Times and Messenger,* February 11, 1868, declared that "such a thing as a five day's election had no precedent except in General Pope's Georgia convention election last fall.—For a special purpose, the polls were kept open five days.—We are sure such a thing will never be witnessed again."

[90] Report of General George Meade on Alabama Election, March 27, 1868, *House Executive Document,* 40 Cong., 2 Sess., no. 238, 2-3. The original manuscript returns are in the archives at Montgomery, Alabama. Fleming, *Civil War and Reconstruction in Alabama,* 541.

[91] General Meade's report to the Secretary of War on the Alabama election is printed in the Selma *Times and Messenger,* April 26, 1868. Meade later reported that the Alabama Constitution was lost by 13,550 votes instead of 8,114.

[92] Selma *Times and Messenger,* March 5, 1868. The Radical delegation carried affidavits, letters, and other documents, which included charges of force, intimida-

Conservatives sent a delegation of five, including John Forsyth and Lewis E. Parsons, to Washington to protect their interests, if possible.[93]

Although the constitution had been defeated under the existing law, Radical newspapers in Alabama were confident that Congress would admit the state. The Mobile *Nationalist* cited fifteen claimed cases of fraud by the Conservatives, and asked: "What will Congress do? We answer, unhesitantly, it will accept our constitution and admit the state. It cannot do otherwise without vastly betraying those who have put their trust in it."[94] On March 6, 1868, John Hardy assured his readers that he had the best assurances from Washington that Alabama would have already been admitted, but for the current time consuming impeachment trial of Andrew Johnson. "Congress will not allow [he said] the wishes of our loyal people to be defeated by the unfair and wicked means used by those who turned their arms against its authority for four years, and who today, with all their professions, are more bitter, proscriptive and vindictive towards Union men than during the rebellion."[95]

---

tion, the closing of polls, the threat of discharge by employers if the voter voted, the destruction of ballots, the presence of whites making "black lists" of Negroes and whites who came to vote, and a great storm which raged for two days. Mobile *Nationalist,* February 13, 20, March 5, 1868. After the defeat of the constitution, Hardy wrote that the rebels "brought their wealth, intellect, and all their vile and outrageous appliances to thwart the wishes of the loyal masses in Alabama." He declared that all their objections had been hypocritical ones; they would not accept a constitution which took power from them, even though "made by Christ." *Daily State Sentinel,* February 22, 1868.

[93] The Conservatives charged that Negroes were driven to the polls by the thousands, carried from county to county and voted in each county, especially where railway transportation was available. "The registered voters of the State [declared the *Selma Times and Messenger* of February 11, 1868] were not permitted to act freely without 'restraint from fear or influence of fraud.' The white masters of the Loyal Leagues drove, through their emissaries, thousands to the polls, who did not wish to vote, and who would not have voted but they were intimidated into doing so. In this county, we know that men were sent from plantation to plantation to drive the Negroes on them to the polls, and that they told those who hesitated about voting, that if they did not vote they would be fined, imprisoned, corporally punished or driven from the State. A letter before us from another county says: 'Montgomery Negroes were sent to my plantation yesterday, to tell the Negroes that if they did not vote they would be put in the penitentiary for seven years. The Negroes obeyed orders—the lame, the halt, the rheumatic turned out. Such is the freedom of the ballot box.' Aye, such is the freedom that the Negroes now enjoy! Nine out of ten of the Negroes in this and the adjacent counties are members of the 'Loyal League' societies, and had taken an oath to obey the white scoundrels who initiated them into these dens of treason. And they were required to vote under the pains and penalties prescribed by the order. The Negro police here, in Montgomery, and in Mobile, lent themselves to the work of intimidation, and used their official position to make that work tell. The 'affidavit' dodge was worth 15,000 of the votes cast for ratification. Told by the white men that perjury in such a cause was righteousness, Negroes had no difficulty in swearing and voting as often as they were required, and that was as often as they could get to the polls. Eight out of ten of the 'affidavit' votes [the military had ordered that one away from home could vote anywhere on the testimony of one witness] were illegal, even under the orders that authorized them to be received."

[94] Mobile *Nationalist,* February 13, 1868.

[95] *Daily State Sentinel,* March 6, 1868.

On the other hand the Conservative press reflected no optimism. Its editors questioned the honesty, integrity, and intentions of the Congress.

> That the rejection of this constitution, however, will give us relief, [wrote Robert McKee] is more than we anticipate. Congress may now set aside its own legislation and declare the constitution ratified anyhow; but such an act will be so clearly partisan, so grossly indecent, such a flagrant use of federal power to establish black domination over the white race in this State, that desperate as the Radical leaders are, we think they will hesitate before taking such a step. It is more likely, we think, that the so-called constitutional convention will be called together again to frame another constitution, to be submitted for ratification by a majority of the votes cast, and voted upon perhaps under a new registration and additional disfranchisements.[96]

Despite the charges of fraud on both sides, General Meade reported after an investigation that the election had been a fair one under the then existing Reconstruction Acts and the constitution had been "lost on its merits." Among the factors listed as causing its defeat were "the determined and rigorous action of its opponents, who resorted to every means within the letter of the law to dissuade voters from going to the polls"; "the several features that made it distasteful to the white voters"; "dissatisfaction with the nominees for office"; "the violent storm which raged the first two days of the election"; and the failure to purge the registration lists before election day of those "who had died or permanently left the State." The report advised that Congress reassemble the convention, which should eliminate the objectionable features of the constitution, and then re-submit the revised constitution to a vote of the people. "I am of the opinion [declared Meade] that a revised constitution, more liberal in its terms and confined to the requirements of the reconstruction laws, would in Alabama as I have reason to expect it will in Georgia and Florida, meet with the approval of the majority of the registered voters."[97]

After the Alabama election, the United States Senate passed the Fourth Reconstruction Act, which the House had passed before the election.[98] It became law, despite the President's veto, and repealed the proviso that one half of the registered voters participate in the election as well as the requirement that Reconstruction constitutions "be ratified by a majority of the votes of the registered electors." It provided for adoption of the constitutions by a "majority of those voting" only.[99] As only Alabama's ratification election had been held under the old law, the bitter issue arose between Congressional Radicals and the Democratic minority as to whether Congress should apply the new law retroactively to Alabama. William D. "Pig Iron" Kelley, a spokesman for Northern industrialists, worked unceasingly for the readmission of Alabama despite the law.[100] Kelley had recently prospected in the state in the interest of Pennsylvania iron manufacturers. He wanted the readmission of Alabama in order that the state might be properly developed industrially under a Republican administration.[101] On March 10, 1868, Thaddeus Stevens, Kelley's colleague from Pennsylvania and chairman of the Committee on Reconstruction in the House, reported a bill for the admission of Alabama.

---

[96] Selma *Times and Messenger,* February 11, 1868.

[97] Report of General George Meade, *loc. cit.,* 5. Accompanying Meade's report were letters from several prominent Republicans in Alabama urging Meade to recommend immediate admission. "I regret extremely [Meade wrote] that it is not in my power to coincide with these gentlemen and cannot concur with them in their views." Montgomery *Daily State Sentinel,* April 3, 1868.

[98] The bill first passed the House December 18, 1867, but was allowed "to sleep" in the Senate largely because impeachment proceedings against Andrew Johnson consumed most of the Senate's time. It became law over President Johnson's veto March 11, 1868, after the Alabama election, February 1-5, 1868.

> The committee on reconstruction [the report declared] have deemed it their duty, under the circumstances, to report a bill for the admission of Alabama, notwithstanding it is shown that less than a majority of the voters registered in the State of Alabama were polled in favor of the adoption of the new constitution. We did this for several reasons; first, because in the opinion of the committee the act of Congress requiring a majority of the registered voters to be in favor of the constitution was an error of legislation, and we ought not to require that it should be followed; and more especially as both houses of Congress have now passed an act amendatory to that act, which only requires that a majority of the votes polled upon the adoption and rejection of the constitution shall be in favor to secure its adoption. The committee could see no reason why Alabama should not have the benefit of that principle as well as the other states which have not yet voted upon their constitutions.[102]

The Democrats on the committee submitted a minority report, which declared that the "registered voters, believing they had the right to defeat a constitution so objectionable as this in either of the ways provided in the aforesaid act, and relying on their own and the good faith of Congress in this behalf," had legally defeated the Constitution. If Congress should disregard the law under which the Alabama election was held, it would commit an unparalleled breach of faith and a violation of a contract, the minority report declared.[103]

As the debate continued on the admission of Alabama, even Thaddeus Stevens hesitated to admit Alabama under the circumstances. He declared that "after a full examination of the final returns from Alabama, which we had not received when the bill was drawn, I am satisfied, for one, that to force a vote on this bill and admit the state against our own law, where there is a difference of twenty odd thousand, would not be doing such justice in legislation as will be expected by the people."[104] As a result, his bill to admit Alabama was withdrawn.[105]

---

[99] Fleming, *Documentary History of Reconstruction,* I, 418.

[100] *Congressional Globe,* 40 Cong., 2 sess., 2039-2141.

[101] *Ibid;* Bond, *op. cit.,* 33-34. Carpetbagger John C. Keffer, Commissioner of Internal Resources and Immigration in Alabama, was a friend of Kelley.

[102] *Congressional Globe,* 40 Cong., 2 sess., 1818. Several acts to readmit Alabama into the Union with its rejected constitution had already been presented to Congress. *Ibid.,* 1217.

[103] *Ibid.,* 1937. Montgomery *Daily State Sentinel,* March 28, 1868.

Instead the House passed a bill setting up a provisional government for Alabama.[106] The rejected constitution would be used as a basis for a state government, and the candidates already elected under it would take office. The first legislature was to submit the constitution (with or without amendments) to a vote of the people. When the constitution had been accepted by a majority of those voting, and the legislature had ratified the Fourteenth Amendment, Alabama would be readmitted into the Union. Until that time Alabama would not be represented in Congress.[107]

The proposal to establish a Radical provisional government in Alabama did not pass the Senate, and Johnson's trial held up the consideration of the admission of Alabama.[108] In the meantime other Southern states adopted constitutions by a "majority of those voting." The House then passed a bill introduced by Thaddeus Stevens for the admission of Georgia, Louisiana, North Carolina, South Carolina, and Alabama.[109]

---

[104] *Congressional Globe,* 40 Cong., 2 sess., 1937-1938.

[105] *Ibid.;* Fleming, *Civil War and Reconstruction in Alabama,* 548.

[106] *Congressional Globe,* 40 Cong., 2 sess., 2193, 2216; Fleming, *Civil War and Reconstruction in Alabama,* 548. John Hardy declared that Thaddeus Stevens really preferred a Radical provisional government to readmission of the State because it would enable Congress to confiscate the property of rebels. "Mr. Stevens [he declared] believes that the rebels control the landed interests of the State, the railroads, the manufacturing, the mechanical, and in truth the wealth of the state, and do not hesitate to use all these influences to make treason respectable. He wishes to humble traitors, and he believes the right way to do that, is to apply 'mild confiscation' to the property of rebels, and disfranchise all who had anything to do with the rebellion and who have not shown sufficient proof of repentance." Montgomery *Daily State Sentinel,* March 19, 1868.

[107] The Conservatives in Alabama sent Congress a petition imploring continued military rule rather than re-admission with the constitution. It declared: "Continue over us, if you will do so, your own rule by the sword. Send down among us honorable and upright men of your own people, of the race to which you and we belong, and ungracious, contrary to wise policy and the institutions of the country, and tyrannical as it will be, no hand will be raised among us to resist by force their authority. But do not, we implore you, abdicate your rule over us, by transferring us to the blighting, brutalizing and unnatural dominion of an alien and inferior race, a race which has never exhibited sufficient administrative ability for the good government of even the tribes into which it is broken up in its native seats, and which in all the ages has itself furnished slaves for all the other races of the earth. *Congressional Globe,* 40 Cong., 2 sess., 1825; Fleming, *Documentary History of Reconstruction,* I, 456.

[108] There were some reports during Johnson's trial that the Radicals would admit Alabama immediately in order to get two more Radical votes in the Senate to remove Johnson. *Daily State Sentinel,* March 21, 1868.

[109] *Congressional Globe,* 40 Cong., 2 sess., 2465. The vote was 109 to 35.

The judiciary committee in the Senate in reporting the House bill struck Alabama from the list because "the election on the ratification of the constitution in Alabama took place when the law required that a majority of all the registered voters should vote on the question of ratification."[110] However, Alabama was again included among the states for readmission by amendment from the floor. Senator John Sherman, who led the fight for the readmission of Alabama in the Senate, argued that Alabama ought to be admitted because of frauds in the election, the necessity for the immediate ratification of the Fourteenth Amendment, and the Republican party's need for Alabama's electoral vote in November, 1868. And, furthermore, he said rejection would force anarchy and lawlessness on the State.[111] Others argued that Congress should follow the "spirit rather than the letter of the law." In June, 1868, the bill easily passed the Senate as it had the House, was vetoed by President Johnson and carried over his veto.[112] In stating his reasons for the veto, the President cited the case of Alabama, and declared the bill a violation of "the plighted faith of Congress by forcing upon that state a constitution which was rejected by the people, according to the express terms of an act of Congress requiring that a majority of the registered electors should vote upon the question of ratification."[113] Alabama, as soon as its new legislature ratified the Fourteenth Amendment, would be readmitted to the Union.[114]

The Conservatives had been forced back into the Union under a Radical state government, when they much preferred continued military rule. But Congressional ruthlessness in dealing with Alabama, further enabled the Conservatives, once they were back in control in 1874, to discredit the Radical Convention and Constitution.[115] "The Constitution of 1868 [said an Address to the people by the framers of the Constitution of 1875] was not the work of the people of Alabama. It is the offspring of usurpation, and the contrivance of unscrupulous adventurers, inflicted upon our people after they had solemnly rejected it."[116]

[110] *Ibid.*, 2858.

[111] *Ibid.*, 2859.

[112] *Ibid.*, 1744, 1972, 2139, 2140, 3029, 3466, 3485. The bill passed the Senate by a vote of 31 to 5. It was passed over by the President's veto in the House by 108 to 31 and in the Senate by 35 to 8.

[113] *Ibid.*, 3466.

[114] The Act of Admission provided that the state could never amend its constitution so as to deprive any citizen of the right to vote; a condition later ignored by the Alabama convention of 1901. Fleming, *Documentary History of Reconstruction*, I, 476.

[115] Some of the Radical constitutions were retained for many years after the southern whites again got control of their governments. Coulter, *The South During Reconstruction*, 135.

[116] Mobile *Daily Tribune*, October 8, 1875. On June 30, 1871, P. T. Sayre testified before a Congressional Committee: "I do not think that all the incidents of the war produced as bad an effect upon the minds of the people as the imposition by Congress of this constitution upon the people." Alabama Testimony in Ku Klux Report, *loc. cit.*, VIII, 358.

CHAPTER XI

THE MOVEMENT FOR THE CONVENTION OF 1875

Although the Constitution of 1868 gave the Radicals complete control of the government of Alabama, the passage of time brought a deterioration of Republican power in the state. In the election of November, 1874, the Democrats, under the leadership of George Smith Houston of North Alabama, gained control of the executive, judicial, and legislative branches of the government. Only local government in the Black Belt remained in the hands of the Radicals.

The Democratic victory of 1874 was accomplished under the command of the "white counties" of North Alabama. Speaking of the Democratic candidates in the campaign of 1874, the Mobile *Register* declared: "Nothing has been conceded that part of Alabama that lies south of Montgomery. . . . We, of south Alabama, only ask in return their [North Alabama's] full vote at the polls in behalf of our common principles and our south Alabama safety."[1] An editorial in the Montgomery *Advertiser* said: "South Alabama raises her manacled hands in mute appeal to the mountain counties. The chains on the wrists of her sons and the midnight shrieks of her women sound continually in their ears. She lifts up her eyes, being tormented, and begs piteously for relief from bondage. Is there a white man in north Alabama so lost to all his finer feelings of human nature as to slight her appeal?"[2] During the campaign the Democrats drew the "color line" and made "white supremacy" the main issue.[3] The Republicans rolled up large majorities in the Black Belt, but the "white counties" enabled the Democrats to secure a majority of 13,190 in the state.[4]

Soon after George S. Houston, the Democratic governor, took office, the Democratic press and leaders made a "home rule" constitution the leading issue. Although some opposition came from commercial industrial interests, which feared agrarian repudiation of debt, and from a few Black Belt Democratic leaders, who had already come to appreciate the additional power in state politics which the Negro suffrage and whole population basis of apportionment decisions of 1868 had given the Black Belt,[4a] the press in general supported the convention movement. The

---

[1] Mobile *Register,* August 2, 1874.

[2] Montgomery *Advertiser,* November 1, 1874.

[3] Mobile *Register,* July 2, 11, August 5, 21, October 2, 1874.

[4] Fleming, *Civil War and Reconstruction in Alabama,* 795.

[4a] "Really, there is but little to quarrel about in the present constitution; truly

Eufaula *News* exhorted the legislature to call a constitutional convention "to make and adopt a constitution . . . for we really have been living for six years past under a constitution that was not framed and adopted by the people of this State. The instrument our State government has been running under since the inauguration of bayonet rule in the State was made in Washington City, or under dictation from the powers of the Federal Government, and contains provisions that not only hamper our progress in material prosperity but absolutely wars against it."[5] The Mobile *Register* said: "There seems to be a very general desire all over the State that a constitutional convention shall be called to modify the present constitution. Very little can be done by the General Assembly to relieve the people from the oppressive load of debt and taxes they now carry. The defects of our governmental system are constitutional."[6] An editorial in the Mobile *Register* gave the history of the Constitution of 1868 as follows:

> The present constitution was framed by the enemies of the white people of Alabama in the year 1867, and put upon the people not only without their consent, but against their earnest protest. In fact it was the work of interested carpetbaggers and scalawags, supported by such enlightened statesmen as the colored people. It was then submitted to the people by a Radical Federal administration, upon which they were told they could express their dissent either by a negative vote or by abstinence from the polls. If they chose the latter method of expression, and it should turn out that the constitution did not carry by a legal majority, it should be held as rejected. The opponents of the constitution (the white people) elected the last method, and the instrument failed before the people for the lack of 30,000 votes. Nevertheless, the terms of submission were openly violated, and the rejected constitution was put upon the people by the military edict of President Grant. Hence we have been living since 1868 under an organic law formed by the enemies of the State, and enforced by the military power of the Federal Government.[7]

The first legislature under Governor Houston appointed a committee,

---

the people as a mass are not quarrelling about it at all," wrote Willis Brewer, editor of the Hayneville *Examiner*, a Black Belt newspaper. Willis Brewer to Robert McKee, February 13, 1875. McKee Papers, Alabama Department of Archives and History. See also editorial from Hayneville *Examiner* printed in *Alabama State Journal*, April 16, 1875.

[5] Quoted in Mobile *Register*, December 2, 1874.

[6] Mobile *Register*, December 2, 1874.

[7] *Ibid.*, April 9, 1875. On July 23, 1875, the *Register* advocated a "home-made and home-rule constitution for the vile thing pinned to our backs by Radical bayonets." The Montgomery *Alabama State Journal*, November 11, 1875, a Republican newspaper, said: "One of the strongest pretended reasons which the Bourbon democracy of Alabama used in the legislature in order to pass the act calling for a convention to frame a new constitution for the State, was that the present constitution was the work of what the Bourbons denominated carpetbaggers or . . . aliens."

of which Peter Hamilton was chairman, to report on the question of a constitutional convention.[8] This committee recommended a convention to aid in adjusting the state debt, abolish the cumbersome Board of Education, make reforms in the judiciary, forbid state aid to railroads and other corporations, abolish unnecessary constitutional offices created by the Radicals, and to write a constitution that would make possible economy in government.[9] The committee also reported a convention bill, which the legislature passed with minor changes.[10] The people were to vote on the question of a constitutional convention on the first Monday in August, 1875, and at the same time elect delegates to a convention. If the convention received a majority vote, it was to meet on the first Monday in September, 1875. The bill, a partisan measure, was supported by the Democrats and opposed by the Republicans in the legislature.[11]

Governor Houston approved the measure; the campaign to secure a favorable vote of the people was launched. Walter Lawrence Bragg, chairman of the Democratic state executive committee and manager of Governor Houston's campaign in 1874, also managed the campaign for the convention.[12] He appealed to the lawyers of Alabama to take the stump for the convention.[13] Hundreds of speeches were made by trained and untrained orators. Governor Houston and John Tyler Morgan toured the state for the convention; Senator John Brown Gordon of Georgia came to Alabama to speak for the convention.[14] Democratic speakers exhorted their listeners to make every effort as the Republican party had lost control of the state by only 13,190 votes in 1874. Democratic speakers and the Democratic press often declared the issue was not a "party issue," hoping to secure Republican votes. The Mobile *Register,* however, disagreed with this strategy and in editorials emphasized the issue as a "party issue,"[15] because the only way to win was to draw the "color line" and rally the whites to overthrow the Negro, Carpetbag, Scalawag Constitution of 1868. The election of 1874 had been won with those tactics, and the fact that the convention bill had passed the legislature with Democratic votes made it a "party issue," the *Register* declared.

Alexander White, Lewis Eliphalet Parsons, Samuel Farrow Rice,

---

[8] *Report of the Joint Committee in Regard to Amendment of the Constitution,* 15; Mobile *Register,* December 10, 1874. Peter Hamilton was the father of the historian, Peter J. Hamilton.

[9] *Report of the Joint Committee in Regard to the Amendment of the Constitution,* 1-15.

[10] *Ibid.,* 15.

[11] Mobile *Register,* December 10, 1874, July 23, 1875.

[12] *Ibid.,* April 16, July 23, 1875.

[13] Montgomery *Alabama State Journal,* May 27, 1875.

[14] Mobile *Register,* July 24, 27, 1875.

[15] *Ibid.,* July 6, 17, 23, 1875.

Datus E. Coon, and United States Senator George Eliphaz Spencer took the stump for the Republican party against the proposed constitutional convention. Coon and Spencer were Carpetbaggers, who had come into the state from Iowa and New York respectively. The others were Scalawags, who in 1867 had signed the "Address to the People" of Alabama against the Radical Constitution. This address begged the people of Alabama "to touch not, taste not, handle not the unclean thing," and declared the Constitution of 1868 "not the constitution of the people of Alabama, but a constitution of a minority of the whole people, and that minority, a Negro minority."[16] In 1868, however, White, Parsons, and Rice went over to the Republican party, and before 1875 they had taken over the leadership in the party. Although, motivated to some extent by personal political ambition, the bitter denunciation by the Conservative press of these men for their course of action is not altogether warranted. By 1868, the Radical program seemed inevitable, and they came to believe that under the existing circumstances the advantages of cooperation with the Radicals outweighed its disadvantages. In their opinion, only through a program of cooperation could Alabama recover from the economic and political disasters of the war.[17]

Great dissension arose in the Republican party after its defeat in 1874. Alexander White, chairman of the Republican state executive committee, issued an address exhorting all Republicans to oppose the convention of 1875 and advising that Republican delegates to the convention not be nominated.[18] Datus E. Coon, Carpetbagger who headed another faction, issued an address advising Republicans to vote against the convention, but to nominate candidates to the convention.[19] This address denounced White's policy of not nominating delegates as one that would lead to the complete disintegration of the Republican party. However, Democrats believed that these opposing addresses constituted a campaign strategem on the part of the Republicans. According to this theory, White's appeal was issued for consumption in the "white counties" where the Republican delegates could not possibly win;[20] Coon's appeal for consumption in the "Negro counties" where Radical delegates could easily be elected.

> There is no muddle about it [declared the Mobile *Register*], and the situation is by no means laughable. It is understood that the Coonites will manage the black counties and the Whiteites will manage the white counties.

---

[16] *Ibid.*, July 18, 1875.

[17] Alabama Testimony in the Ku Klux Report, February 19, 1872, *Senate Reports*, 42 Cong., 2 Sess., No. 22, VIII, 502.

[18] Mobile *Register*, June 20, July 9, 1875.

[19] Montgomery *Alabama State Journal*, June 27, 1875; Mobile *Register*, July 9, 1875.

[20] Mobile *Register*, July 9, 22, 23, 1875.

> In the black counties where they can elect delegates, the Radicals will follow the advice of Coon and put candidates in the field with the object of drawing out a full black vote. With candidates before them the colored voters see something tangible. The Radical party understands very well that the black counties will have a large representation in the convention. They aim at one or two results by their double policy. By having candidates in the black counties they make it a party question and draw out the bulk of the black votes. By having no candidates in the white counties they hope to produce the impression that there will be no contest over the call for a convention and thus delude the whites into a belief that a small attendance at the polls will be sufficient to elect their candidates and secure the convention. While the white counties are asleep the black counties are preparing to defeat the call, or failing in that to elect enough Radicals who, joined with the anti-conventionists of the white counties may control the convention. In either event they gain, if successful, an important victory—one which will put the Conservatives and Democrats at a disadvantage in the election of 1876.[21]

Republican postmasters distributed thousands of handbills against the convention.[22] The Republican press, which consisted of the Montgomery *Alabama State Journal,* the Talladega *Home,* and the Selma *Republican,* opposed the convention and published many addresses and circulars against it by leading Republicans.[23]

Democrats advocated a convention to abolish the Board of Education created by the Constitution of 1868,[24] being careful to emphasize that in its place they would create an efficient school system. The Board was attacked as cumbersome, inefficient, and expensive. It had power to make all laws on education, but the legislature had the right to repeal these laws. The Board and the General Assembly were both legislative bodies and were constantly fighting each other in regard to educational legislation.[25] Democratic speakers denounced the Board as an innovation in government. Decatur C. Anderson, lawyer and Alabama legislator, said that it was introduced in the convention of 1867 "by Coon of Iowa, and is the same as the one recently rejected by that State. He had read it in the statutes of that State."[26] State Superintendent of Education John Martin McKleroy declared that the Board should be abolished "not as a matter of economy, but because there is and probably will be an antagonism between it and the General Assembly, and because a special legislature is an anomaly in our form of government."[27] Democratic speakers differed with the superintendent on the matter of economy. Representative Thomas H. Price declared: "We have a school legislature which is an expensive and useless appendage, whose enactments are repealable by the General Assmbly, though our people are impoverished and scarcely able to bear the most simple form of government."[28] The Mobile *Register* advocated the election of county superintendents by the people rather than their appointment by the Board of Education.[29]

---

[21] *Ibid.,* July 9, 1875.

[22] *Ibid.,* July 23, 25, 1875.

[23] Montgomery *Alabama State Journal,* June 19, 27, 1875.

[24] Mobile *Register,* April 16, July 15, 20, 22, 29, 1875.

[25] See the Mobile *Register,* December 15, 1874, for the methods used by the Board in winning a fight with the legislature of 1874-1875. Also, *Journal of the Board of Education,* 1869-1874, 89-91.

[26] Mobile *Register,* July 15, 1875. "No such thing as this constitutional Board of Education has ever existed in any state in the Union, except for a time in Iowa. There can be no concord between this Board and the General Assembly," declared the *Register,* December 2, 1874.

Democrats emphasized the need for retrenchment and economy in government.[30] A constitutional convention was needed to abolish the unnecessary and useless offices created by the Constitution of 1868. In addition to the Board of Education, the offices of lieutenant governor and the commissioner of industrial resources were attacked.[31] The Limestone *News,* edited by Governor Houston's secretary and hence considered his official organ, declared that "the office of lieutenant governor . . . is as useless as a fifth wheel to a wagon."[32] Many argued that the number of judges and solicitors created by the Constitution of 1868 could be reduced in the interest of economy without impairing the efficiency of the judicial department of the government.[33] A few even advocated that the offices of state and county superintendents of education should be abolished and their duties given to other state and county officials.[34]

The large state debt made necessary economy in government. The governor's commission to adjust and liquidate the indebtedness of the state was not to report to the legislature until 1876, but it was generally conceded that the indebtedness of the state was about $29,000,000 one-fifth of the total value of all property in the state.[35] About two-thirds of this debt consisted of railroad bonds[36] guaranteed by the Alabama legislature under sections 32 and 33 of Article IV of the Constitution of 1868. These sections discouraged the lending of state aid to corpora-

[27] Mobile *Register,* July 29, 1875.

[28] *Ibid.,* July 24, 1875.

[29] *Ibid.,* July 20, 1875.

[30] *Ibid.,* April 16, July 6, 8, 22, 25, 27, August 1, 1875; *Alabama State Journal,* July 13, 1875.

[31] Mobile *Register,* April 16, July 6, 15, 1875; Montgomery *Alabama State Journal,* August 7, 1875.

[32] Quoted in Montgomery *Alabama State Journal,* July 13, 1875.

[33] Mobile *Register,* April 16, July 15, 1875; Montgomery *Alabama State Journal,* August 7, 1875.

[34] Mobile *Register,* July 15, 1875; Montgomery *Alabama State Journal,* July 28, August 7, 1875.

[35] Mobile *Register,* December 10, 1874, July 6, 1875. See also Ralph B. Draughon, "Some Aspects of the History of Alabama Bond Issues," *The Alabama Review,* VI (July, 1953), 167-169.

[36] *Report of the Commissioners to Adjust and Liquidate the Indebtedness of the State of Alabama,* 11; Mobile *Register,* December 10, 1874.

tions by requiring a two-thirds vote of the legislature for such aid, but this restriction had proven totally inadequate since 1868. Some of the advocates of a convention in 1875 wanted to make a favorable vote of the people necessary for such aid; others wanted to place an absolute prohibition on the lending of credit of the state to corporations. Levi Welbourne Lawler, one of the commissioners to adjust the state debt, said: "If the present constitution were perfect in all other respects, the evils which have been entailed upon the State under the authority conferred upon the legislature to endorse railroad bonds and otherwise use the credit of the State in aid of internal improvements, would justify the trouble and expense of holding a convention for the purpose of incorporating a positive prohibition of such authority."[37] The Mobile *Register* advocated a convention because "the experience of the last few years shows that there must be a greater restriction upon the authority of the legislature to plunge the State into debt, and the way in which Montgomery, Dallas, and other Radical counties have been plundered by rascally officials, makes it clear that counties must be restrained in like manner."[38]

Some advocates of a convention wanted the convention charged with the responsibility of adjusting and liquidating the state debt. The Mobile *Register* advocated such a plan.[39] However, Governor Houston and others opposed this plan because they feared complete repudiation of the debt by the convention. As a result the legislature of 1874-1875 decided that the commissioners should report to the legislature of 1875-1876 rather than to the convention.[40] What the convention did about taxation, however, would vitally effect the possibility of paying the debt. Many advocates of a convention said that one of the main reasons for a convention was to place a limit on state, county, and municipal taxation[41] and that this limit should be placed at between one-half of one per cent and one per cent of the value of the property taxed. If the limit were placed too low it would force outright repudiation rather than adjustment of the debt. Representative Thomas H. Price said the state needed a convention to "put a reasonable limit on taxation, make it impossible to increase the public debt, put it out of reach of counties to tax the people out of house and home."[42]

In the interest of economy and efficiency in government, the advocates of a constitutional convention wanted biennial sessions of the legislature

[37] Mobile *Register,* July 7, 1875.

[38] *Ibid.,* July 14, 1875. A circular to the Democratic voters of Mobile said that "the credit of the State and our protection against oppressive and increased taxation are at stake." See *ibid.,* July 3, 1875.

[39] *Ibid.,* December 10, 1874.

[40] *Ibid.,* December 17, 1874.

[41] *Ibid.,* July 6, 24, 1875; Montgomery *Alabama State Journal,* May 27, June 13, 1875.

[42] Mobile *Register,* July 24, 1875.

limited to fifty days or less.[43] Leroy Brewer, one of the Democratic candidates for the convention, declared that "one of the greatest evils of the day is the tendency to over legislate."[44] He and others wished restrictions placed on local and special legislation.[45] This type of legislation more than any other made legislative sessions long and expensive. It also encouraged graft and inefficiency in government. Most of the time of the legislature was given to local legislation, and major legislation was rushed through in the last few days of a session. The Mobile *Register* asserted:

> The evils of local and special legislation have become enormous. We need but look to our session acts to be satisfied that this species of legislation occupies the larger portion of the time of our General Assemblies to the neglect and prejudice of our public interest. The expense to the State in passing, publishing such laws, and the combinations by which private interests have been advanced and dangerous monoplies created, are well known.[46]

A campaign document of Democratic candidates in Montgomery County made prohibition of local legislation one of the main reasons for a convention. It resolved "that there be a constitutional prohibition against making married women free dealers, and relieving minors of the disability of non-age, by legislative enactment. This should be left to the courts of the country. Such clauses as this will greatly reduce the labors and expenses of the legislature, and will relieve the people of much burdensome taxation."[47]

Democrats advocated a convention to separate state and federal elections.[48] This could be done by moving the state election back from November to the first Monday in August, the date on which it had been held before 1868. This change would remove any constitutional basis for federal interference in state elections. The plan met with general approval in all parts of the state except Mobile where the Mobile *Register* opposed it because many of the whites in the city were on their vacations in the up-country in August.[49] Without a full white vote Mobile might again fall under Negro-Carpetbag rule, the editor declared.

Democrats wanted a convention to abolish the "odious registration oath" written into the Constitution of 1868 by the Radicals.[50] That constitution required a voter to swear "that I accept the civil and political equality of all men; and agree not to attempt to derprive any person or persons, on account of race, color, or previous condition, of any political or civil right, privilege or immunity, enjoyed by any other class of men."[51] The legislature of 1874-1875 passed a registration law which required a new registration before the vote on the question of a convention.[52] All who registered had to take the "odious oath" and were reminded that a convention would write it out of Alabama's fundamental law.[53]

---

[43] *Ibid.*, July 4, 15, 1875.

[44] *Ibid.*, July 16, 1875.

[45] *Ibid.*, July 15, August 7, 1875.

[46] *Ibid.*, August 7, 1875.

[47] *Ibid.*, August 3, 1875.

[48] *Ibid.*, April 16, June 16, 1875.

[49] *Ibid.*, April 16, June 16, 1875.

[50] Montgomery *Alabama State Journal*, July 22, 23, 29, 1875; Mobile *Register*, April 16, 1875.

The advocates of a convention often referred to the need for immigration and industry in Alabama.[54] They advocated striking out the section in the Constitution of 1868 which made a stockholder liable for double the amount of stock held.[55] They argued that this discouraged corporations from coming into the state and indirectly discouraged immigration. Also, the Constitution of 1868 discouraged industry because it forbade the legislature to give a corporation tax exemption in order to encourage it to move into the state,[56] they declared. An address to the people issued by the Democratic executive committee declared that if the people did not vote for the convention the industry and immigration which they desired would never materialize.[57]

The Democrats advocated a convention to change the existing apportionment in the state legislature.[58] The Mobile *Register* declared that the current apportionment "gives a large minority of Negroes an equal voice in the state government with a large majority of whites."[59] Joseph Hodgson asserted that "the present constitution gives a minority of Negroes in the cotton belt a larger representation in the General Assembly than a majority of whites in the white counties. This outrage will remain unless the people change the constitution."[60] Republicans charged that the Democrats wanted "to apportion representation in the legislature so that they can always swing a two-thirds vote over the Radicals in both houses. This can be done by making the basis of representation 'territory' instead of 'population.' "[61]

Some wanted reforms in the judiciary. The Mobile *Register* said that the judicial districts as fixed by the Constitution of 1868 were too inflexible.[62] A circular issued by the Montgomery County candidates for the convention advocated the abolition of county solicitors and the substitution of "the old and peaceful rule of one solicitor for each judicial district."[63]

---

[51] Article VII, section 4.

[52] *Acts of Alabama* (1874-1875), 68; Mobile *Register,* July 10, 17, August 8, 1875.

[53] Montgomery *Alabama State Journal,* July 22, 25, 1875. See issue of July 25 for a speech of Governor Houston's against the "odious oath."

[54] Mobile *Register,* July 16, 23, 24, 31, 1875.

[55] *Ibid.,* July 16, 24, 1875.

[56] *Ibid.,* July 17, 1875.

[57] *Ibid.,* July 23, 1875.

[58] *Ibid.,* April 16, July 15, 1875; Montgomery *Alabama State Journal,* May 30, August 7, 1875.

[59] Mobile *Register,* April 16, 1875.

[60] *Ibid.,* July 15, 1875.

[61] Montgomery *Alabama State Journal,* May 30, 1875.

[62] Mobile *Register,* April 16, 1875.

Republicans opposed the convention and aroused the fears of the people as to what the convention might do. The Mobile *Register* complained that "the friends of the convention were met with a host of objections aimed at what the convention should or should not do—at what it might, could, would, or should do, or might, could, would, or should not do."[64] Democrats anticipated a campaign of fear and sought to quiet the fears of the people by placing limitations on the convention. Section 9 of the Enabling Act submitting the question of a convention to the people provided that if a convention were called it could pass no ordinance or law as had been done by the conventions of 1861, 1865, and 1867, nor deprive any person in office of his right to the office, nor place any property or educational qualification on the right to vote, nor do any act but frame and recommend for adoption a constitution.[65] In order to combat the Radical charge that the convention would destroy the public school system, the Democrats provided in the Enabling Act that "it shall be the duty of the convention to provide for a system of common schools."[66] The act also provided that, after a constitution had been framed, a favorable vote of the people would be necessary to put it into effect.

The Republicans, however, declared that a constitutional convention was sovereign and could not be limited by the legislature calling it into existence.[67] Many editorials were written by the Republican and Democratic press on the powers of a convention. Democratic newspapers contended that a convention could be limited, but the *Alabama State Journal* declared:

> If the legislature could prescribe what should or should not be incorporated in a new constitution, why couldn't the legislature itself make the new constitution entire, and save the people the enormous expense of a convention? We assume the position that the legislature had no right to prescribe what subjects the constitutional convention should consider, nor had it the right to forbid it to do a certain thing. When the legislature passed an act calling the convention, it exhausted all the powers it had or could have. . . . The clause in the act which limits the proposed constitutional convention in Alabama amounts to nothing. If the convention ever meets and chooses to disregard the prescriptions of the act of the legislature, we should be pleased to have the *Advertiser* inform us, what are you going to do about it. What power is there to compel the convention to recognize the act of the legislature? We all remember how the secession convention of 1860 trampled down all law and constitutional provisions by assuming legislative powers.

---

[63] *Ibid.*, August 3, 1875.

[64] *Ibid.*, August 21, 1875.

[65] *Acts of Alabama* (1874-1875), 112.

[66] *Ibid.*

[67] Montgomery *Alabama State Journal*, April 15, June 6, July 23, August 3, 1875.

and even going so far as to make a new constitution. Yet, that convention was called for the sole and exclusive purpose of considering the one single question of secession.[68]

Democrats, including Governor Houston, pledged themselves to help defeat the new constitution if the convention violated these limitations.[69] But the Republicans countered by saying that these pledges were worthless, since the new constitution would be proclaimed by the convention rather than submitted to the people despite the pledge to submit it. The *Alabama State Journal* said:

> Now we put the question to the managers of the convention: Do you propose to abolish the school fund and the exemption laws, and declare a constitution in effect, without submitting it to the people? To be more explicit: Do you intend to submit the constitution to the people for ratification or rejection?[70]

The Montgomery *Advertiser* answered:

> We know nothing about 'the managers of the convention,' but we do know that those who favor it do not 'propose to abolish the school fund and the exemption laws and declare a constitution in effect without submitting it to the people.' We know that they do intend to submit the constitution to the people for ratification or rejection. If it is not ratified by the people at an election held for that purpose it will not be the constitution of Alabama; and to this the Legislature, the Governor, and the Democratic and Conservative Party of Alabama are each firmly pledged by all that is sacred and honorable among men, and the convention whenever it assembles is pledged by honor and oath to do the same thing.[71]

The Republicans said that the attempt to call a convention in 1875 was the story of 1861 repeating itself.[72] The same secession leaders who led Alabama out of the Union then were now seeking to abolish the Reconstruction settlement by overthrowing the Constitution of 1868 written under the auspices of the federal government. The *Alabama State Journal* asserted:

> The old secession leaders are now scheming to get full and complete control of the State government; and they hope by means of a constitutional convention to accomplish their purposes and entrench themselves permanently in power. Then all the results of a war are to be reversed so far as Alabama is concerned, and a system of human slavery is to be again established, by which the Negroes will be deprived of every vestige of political existence.[73]

[68] *Ibid.,* April 17, 1875.

[69] Montgomery *Advertiser,* June 5, 1875; Mobile *Register,* July 15, 22, 24, 27, 1875.

[70] Montgomery *Alabama State Journal,* June 4, 1875.

[71] Montgomery *Advertiser,* June 5, 1875.

[72] Montgomery *Alabama State Journal,* April 2, 17, August 3, 1875.

[73] *Ibid.,* July 23, 1875. "It is because the present constitution was made and put in operation under the reconstruction measures and the auspices of the Federal

The *Journal* further declared that the convention was called "out of hate and prejudice, and for the purpose of revenge and resentment."[74] It will "lead to a rupture with the Federal Government, and result in ruin and misery to the entire people of the State."[75]

The Republicans appealed to the Negro vote in the Black Belt and to the poor white vote in the "white" counties;[76] they declared the Democratic party "the enemy of the poor people of Alabama."[77] The new constitution would take from the poor their free schools, establish educational and property qualifications for voting, bring back imprisonment for debt, abolish the exemption of property from execution clauses of the Constitution of 1868, provide for the garnishment of the laborer's wages, abolish the clauses in the Constitution of 1868 giving women their rights, and take from the people the right to elect judges and other officials.[78] The Montgomery *Alabama State Journal* maintained:

> The poor whites of this commonwealth will lose their free schools, if that constitutional convention ever meets. We warn the people of the poor white counties that all the school fund they will ever afterwards receive will be their sixteenth section fund, which amounts to but a few dollars. And we finally warn the poor white people of Alabama that, if this convention ever assembles, a property and educational qualification will be required of voters. In the effort to keep down the Negroes, these old secession leaders will sacrifice every poor white man in the State.[79]

Democrats in the state received the support of at least one northern newspaper. An editorial in the New York *Herald* said:

> The Democratic Committee shows that the charge that the convention is intended to break down the public school system and restrict the suffrage by imposing a property or educational qualification, is false, primarily because it has not the power to do so under the Enabling Act. It denies the intention of the convention to authorize imprisonment for debt or to abolish the exemptions now allowed to impoverished debtors, and pledges the party, if such provisions should be introduced into the constitution, to vote them down. And this every malignant falsehood coined with a view to scaring the more ignorant whites into a coalition with the Negroes, for the benefit of the carpetbaggers, who claim to be fighting the holy battle of the poor against the rich, is met with unqualified denial or ample pledges.[80]

Government, that the old secession leaders, who have brought so much misery and suffering on our people, clamor for a constitutional convention," declared *ibid.,* April 17, 1875.

[74] *Ibid.,* April 17, 1875.

[75] *Ibid.,* April 3, 1875.

[76] *Ibid.,* April 2, May 30, 1875; Mobile *Register,* July 22, 23, 28, 1875.

[77] Mobile *Register,* July 23, 1875.

[78] All of these charges were either made by the Montgomery *Alabama State Journal* or the Republican executive committee in addresses and circulars to the people.

[79] Montgomery *Alabama State Journal,* April 2, 1875.

[80] Quoted in Mobile *Register,* July 28, 1875.

A letter to the Mobile *Tribune* declared that there is "strong opposition among the masses. . . . The people fear the abrogation of the exemption laws, the destruction of the free school system, and other changes adverse to the many, but in the interest of the few. They are apprehensive that the convention, if called, will manage, despite the pledges, to omit submitting the proposed constitution to a popular vote."[81] Popular fear that the convention might abolish the exemption provisions of the Constitution of 1868 was perhaps the hardest for the Democrats to overcome.[82] But the charges that the convention would destroy the public school system, strike out the section in the Constitution of 1868 against imprisonment for debt, establish educational and property qualifications for voting, and take from the people the right to elect judges, were also very effective in arousing opposition to the convention.

As the campaign progressed, it became more bitter. The Republicans called the Democrats "Bourbons";[83] the Democrats called the Republicans "Jacobins and niggers."[84] The Republicans appealed to a popular prejudice against lawyers. They said that if the convention met it would be a lawyer's convention, and "lawyers are the representatives of the creditor class."[85] They claimed that the debtor class would not be represented in the convention. The *Alabama State Journal* advocated the election of "business men, merchants, farmers, and mechanics"[86] instead of lawyers and officeholders.

The people voted on August 3, 1875, to call a convention by a vote of 77,763 to 59,928, a majority of 17,835 for a convention.[87] There were only 137,691 ballots cast in the election as compared with 201,046 in the Democratic victory election of 1874. Certainly the smaller vote showed a lessening of interest on the part of the electorate. The Montgomery *Advertiser* pronounced it "a greater victory than that of last November,"[88] but the Mobile *Register* thought it was a much narrower one.[89] "The friends of the convention have been opposed by all the power of

---

[81] Quoted in Montgomery *Alabama State Journal,* August 3, 1875.

[82] Scarcely a speech was made or an article written by either side that did not contain the subject of exemptions. Joseph Hodgson, at a Democratic convention rally in Mobile, said that there "need be no fear of a diminution of exemptions, or of imprisonment for debt, or of garnishment of wages." Mobile *Register,* July 15, 1875.

[83] Montgomery *Alabama State Journal,* April 15, May 4, August 14, 1875.

[84] Mobile *Register,* July 4, 24, 1875.

[85] *Ibid.,* July 20, 1875, quoting a circular of the Republican state executive committee.

[86] Montgomery *Alabama State Journal,* April 18, 1875.

[87] Fleming, *Civil War and Reconstruction in Alabama,* 797; Mobile *Register,* August 12, 1875.

[88] Quoted in Mobile *Register,* August 10, 1875.

[89] Mobile *Register,* August 4, 1875. Actually the Democrats secured a majority of only 13,190 in the November, 1874, election (107,118 to 93,928).

Federal officials, by the combined Republican vote, and by all the disaffected and disappointed men who have personal grievances to avenge," declared the *Register*. "They found themselves opposed also by the timid and ignorant who feared reactionary legislation prejudicial to the interests of the debtor class."[90]

Most of the Black Belt and also five other counties scattered over the state voted against the convention; the important county of Mobile cast its ballots for the convention by a very narrow margin.[91] Eighty Democrats, twelve Republicans, and seven "Independents" were elected.[92] Most of the Republican and "Independent" delegates were from the Black Belt; four of them were Negroes.[93] As the "Independents" had been elected with the votes of former Republicans, they would probably vote with the Republicans. However, Sam Rice, leader of the Republican opposition, could count on the consistent support of only the twelve Republican members. Obviously, the Democrats had overwhelming control of the convention.

---

[90] *Ibid.*

[91] The commercial interests in Mobile had opposed a convention because they feared its action on such important questions as debt repudiation, state aid to railroads, and other like issues.

[92] Fleming, *Civil War and Reconstruction in Alabama,* 797; Mobile *Register,* August 12, 1875; Montgomery *Advertiser,* September 5, 1875.

[93] See maps showing areas from which the Democratic, Republican, and "Independent" delegates were elected. Going, *op. cit.,* 220-221.

CHAPTER XII

THE BOURBON CONVENTION AND CONSTITUTION OF 1875

The convention met on the first Monday in September, 1875, as provided by the Enabling Act.[1] There were numerous candidates for the presidency, the most important of whom were Leroy Pope Walker and William Calvin Oates.[2] Since North Alabama had been given all important offices in 1874 in an effort to redeem the state from Radical rule, the Mobile *Register* contended that South Alabama should have the presidency of the convention. "South Alabama [wrote editor Joseph Hodgson] can justly urge her claim for consideration. Today she enjoys no preferment in any of the offices of the State."[3] In a caucus of the Democratic delegates, however, the final choice was between Walker and Stone, both delegates from North Alabama.[4] Walker won over Stone by a vote of 49 to 28 in the caucus and was unanimously elected president by the convention.[5] Walker's father, John Williams Walker, had been president of Alabama's first constitutional convention and Alabama's first United States Senator. Leroy Pope Walker had been speaker of the Alabama House of Representatives, a delegate to the Charleston and Richmond conventions of the Democratic party in 1860, Alabama commissioner to the Tennessee secession convention, and Secretary of War in the Confederate Government.[6] In his acceptance speech, Walker denounced the Constitution of 1868 as "a piece of unseemly mosaic, composed of shreds and patches gathered here and there, incongruous in design, inharmonious in action, discriminating and oppressive in the burthens it imposes, reckless in the license it confers on unjust and wicked legislation, and utterly lacking in every element to inspire popular confidence and the reverence and affection of the people."[7] He asked the convention to write a constitution that would recognize "the perfect politcial and civil equality of all men, of whatever race, color, or previous condition," provide for an efficient public school system, limit the legislative power of taxation because the "power to tax is the power to destroy," provide for as simple a government as possible in order to secure efficiency and economy, provide for constitutional prohibitions against state, county, and municipal aid to corporations, prohibit local legislation, and provide for an incorruptible judiciary not affected by popular clamor.[8]

---

[1] *Acts of Alabama* (1874-1875), 111.

[2] Mobile *Register,* August 11, 24, September 8, 1875; Montgomery *Alabama State Journal,* September 7, 1875. Leroy Pope Walker, Lewis Maxwell Stone, Francis Winfield Sykes, and William Swearingen Mudd of North Alabama, and Francis Strother Lyon, Edward Hawthorne Moren, William Calvin Oates, and Thomas Hord Herndon of South Alabama, were all frequently mentioned.

[3] Mobile *Register,* August 11, 1875. John Forsyth's health was failing and Joseph Hodgson, formerly editor of the Montgomery *Mail* was acting editor of the Mobile *Register.* Montgomery *Alabama State Journal,* June 4, 1875.

[4] Mobile *Register,* September 8, 1875; Montgomery *Alabama State Journal,* September 7, 1875.

[5] *Journal of the Convention of 1875,* 4; Mobile *Register,* September 8, 1875.

[6] Owen, *op. cit.,* IV, 1717.

More than half of the members of the convention of 1875 were lawyers. Other delegates were planters, farmers, merchants, preachers, editors, and physicians. There was not a single member of the Radical convention of 1867 in the convention, but there were seven members of the secession convention and two members of the convention of 1865 present. The *Alabama State Journal* declared that "all the members of the constitutional convention, with the exception of the colored members, are ex-Confederates, and old citizens of the State."[9] The correspondent of the Mobile *Register* recorded that most of the members were middle-aged men. "There is not a member [he said] under thirty years of age, and but three or four under forty."[10] Several of the delegates were in their eighties.[11]

Prominent among the delegates were Rufus Wills Cobb, lawyer and Governor of Alabama from 1878-1882; William Garrett, legislator and author of *Public Men of Alabama;* Thomas Hord Herndon, Democratic candidate for governor in 1872; Charles Carter Langdon, editor and legislator; Francis Strother Lyon, lawyer, congressman, and commissioner to liquidate the state bank in 1845; Edward Hawthorne Moren, Lieutenant-Governor of Alabama, 1870-1872; William Swearingen Mudd, lawyer, legislator, and circuit judge; William Calvin Oates, lawyer, and later congressman and governor; Edward Asbury O'Neal, later governor; James Lawrence Pugh, lawyer, United States representative and later senator; Samuel Farrow Rice, lawyer, legislator, chief justice of the state Supreme Court, and the most important Republican member of the convention; William James Samford, lawyer, and later congressnan and governor; Lewis Maxwell Stone, lawyer and legislator; and Francis Winfield Sykes, physician, who was elected senator by the 'capital assembly" in 1873 but denied his seat by the United States Senate.[12]

---

[7] *Journal of the Convention of 1875,* 5. However, twenty-seven delegates, including two future governors of Alabama (Rufus W. Cobb, and Edward A. O'Neal), voted to make the Radical constitution the "basis of the [convention's] action" in writing a new constitution. These men represented the commercial-industrial interests rather than the agrarians, which were in control. The vote was 65 to 27. *Journal of the Convention of 1875,* 17. The Mobile *Daily Register,* September 29, 1875, declared that the agrarians controlled the convention rather than the commercial interests. For the agrarian-industrial struggle in Alabama over the debt and railroads during George S. Houston's administration, see C. Vann Woodward, *Origins of the New South, 1877-1913, A History of the South,* IX, 9-10, and Bond, *op. cit.,* 55-57, 60-61.

[8] *Journal of the Convention of 1875,* 5-6.

[9] Montgomery *Alabama State Journal,* September 7, 1875. In 1875, most of the Carpetbaggers were no longer influential, or had left the state. Republican party leaders were now mostly native Alabamians, who had gone over to the party during the Reconstruction period. No doubt some had been motivated in part by personal motives, but many of them believed that Alabama's best interest could be served by a policy of cooperation with the federal government rather than a policy of defiance. Republican delegates in the convention (for example, Alexander White and Judge Samuel F. Rice) were ardent advocates of the Radical Constitution, its emphasis on education, industry, improved agriculture, and all its liberal provisions. The Mobile *Register,* July 18, 1875, bitterly assailed White and Rice, because in 1868 they had signed the Address of the Conservatives against the Radical Constitution and were now "traitors to the cause."

[10] Mobile *Register,* September 8, 1875.

[11] Montgomery *Alabama State Journal,* September 7, 1875; Mobile *Register,* September 8, 1875.

Much of the work of the convention of 1875 was done in caucus by he Democratic delegates.

> It may seem [stated the Mobile *Register*] a little remarkable with what nanimity the convention acts upon most questions. This is not because here are not those who have different opinions from a majority of the convention, but all questions are first discussed fully in committee, and then ach day from nine until one o'clock, a conference is had among the Demoratic members and all propositions are discussed and the will of the majority s ascertained. . . . Partisanism and self sacrifice is the order of the day nd the previous question silences the Radicals.[13]

The convention adopted the rules of the Alabama House of Representaives with some important changes.[14] One alteration increased the numer of delegates necessary to demand a roll call vote. Such a vote could e forced only on demand of one-sixth of the convention, or seventeen nembers. Another amendment to the rules of the House provided that f two-thirds of the members wanted "the previous question called," hen debate could be stopped and a vote taken. These changes were nade to prevent dilatory tactics by the Republicans. Republicans obected to the one-sixth rule because it might prevent the recording of iow a delegate voted on a certain matter.[15] Sykes, chairman of the Rules Committee, replied that the rule was adopted to save time and on imortant issues seventeen delegates could easily be found to demand a oll call vote.[16] Republicans objected to the rule that a two-thirds majority might demand the previous question on the ground that it would stifle debate. Rice wanted the "freest and fullest discussion on all matters brought before the convention."[17] He moved to substitute four-fifths for two-thirds.[18] This motion was voted down, but throughout the convention the Republicans continued to protest against the rules. On one occasion, Rice said that the previous question "cuts off the ayes, noes, and ears too."[19]

---

[12] The Senate seated George Eliphaz Spencer, elected by the Radical "Court Iouse" Assembly.

[13] Mobile *Register,* September 19, 1875.

[14] *Journal of the Convention of 1875,* 11, 22; Mobile *Register,* September 12, 375; Montgomery *Alabama State Journal,* September 11, 1875.

[15] Mobile *Register,* September 9, 1875.

[16] Montgomery *Alabama State Journal,* September 11, 1875.

The convention appointed committees on the bill of rights, the legislative department, the executive department, the judicial department, education, finance and taxation, elections and basis of representation, corporations, exemptions, amendments to the constitution and miscellaneous provisions, militia, and the order, consistency, and harmony of the whole constitution.[20] It was also decided that propositions presented to the convention should be immediately referred to the appropriate committee rather than discussed in the committee of the whole and then referred.[21] Under this system, which would further restrict the Republican minority, a matter would have to receive the favorable report of the committee before it could be debated in the convention.

The convention voted down plans for a verbatim report of the proceedings of the convention in the interest of economy, although a Huntsville printer made a very reasonable offer.[22] It was argued that such a report would be of untold value to the courts in interpreting the constitution. However, as was pointed out, it might also give the United States government evidence against the new constitution.[23] The Enabling Act had provided that the convention must keep a journal, and the convention decided by a close vote to print five hundred copies.[24]

Because of popular feeling against the numerous laws and ordinances passed by the conventions of 1861, 1865, and 1867, the Enabling Act provided that the convention could pass no law or ordinance, nor do anything but frame a constitution.[25] A test of whether the convention would observe the limitations placed on it by the legislature was one of the first issues to arise and the convention decided to honor the Enabling Act.[26]

---

[17] Mobile *Register,* September 12, 1875.

[18] *Ibid.*

[19] *Ibid.,* September 25, 1875.

[20] A controversy arose during the organization of the convention concerning the number and work of the committees of the convention. One group wanted one committee similar to the one that wrote the Alabama Constitution of 1819. However, wiser councils prevailed and the membership of the convention was broken up into appropriate committees, each of which made reports on certain sections of the constitution. *Journal of the Convention of 1875,* 8-9, 15; Mobile *Register,* September 9, 1875.

[21] Mobile *Register* September 8, 1875.

[22] *Journal of the Convention of 1875,* 12, 16, 23. Montgomery *Alabama State Journal,* September 9, 1875; Mobile *Register,* September 12, 1875.

[23] Montgomery *Alabama State Journal,* September 9, 1875.

[24] *Journal of the Convention of 1875,* 167.

[25] *Acts of Alabama* (1874-1875), 112.

The committee on the bill of rights made a majority and minority report.[27] The majority report changed the words "all men are created equal" in the Radical Constitution of 1868 to "all men are equally free and independent"; declared that the state could not be sued in any court of law or equity; placed an absolute prohibition against suspension of the writ of *habeas corpus;* changed the section on secession in the constitution to read "this State shall never claim or exercise any right to sever its relations with the Federal Union"; gave foreigners all the rights and privileges enjoyed by native born citizens of the state; and forbade any educational or property qualification for suffrage or office holding or any restraint upon suffrage or officeholding because of race, color, or previous condition of servitude.[28] The minority report signed by the Republican members of the committee, differed with the majority only on the "secession" section.[29] It would retain the section of the Radical constitution of 1868 which declared "this state has no right to sever its relations with the Federal Union." For a second time in Alabama's history, long and bitter debate occurred on the wording of this section, and on whether any section on the subject should be included in the constitution.[30] Republicans, led by Rice, favored the minority report. Democrats objected because they thought the right to secede once existed. The sword alone had prevented the secession of the South. The Mobile *Register* expressed the sentiments of the latter group when it said: "It was enough for the South to obey the law of the sword. She was not expected to rub salt into her wounds. The subject should have been religiously left alone with the 'furled banner' that once represented it."[31] Some Democrats thought the whole section should be omitted, others that the omission would be misinterpreted in the North. Finally, James Lawrence Pugh presented an acceptable compromise, declaring that "the people of this State accept as final the established fact that from the Federal Union there can be no secession of any state."[32] A group of state righters, led by Charles Carter Langdon of Mobile, proposed that the following section be added to the bill of rights:

---

[26] By error in legislation, the legislature of 1874-1875 had provided that the tax collectors elected in 1872 should hold over. In many counties in the state, the tax collectors elected in 1874 were demanding the office, and in some cases secured it. Andrew C. Hargrove introduced an ordinance to determine who were the legal tax collectors. A committee on the subject was appointed and long debate ensued. Some argued that the matter was of such a vital nature that the convention would be justified in violating the Enabling Act. Others said that the matter was one for the courts to decide rather than the convention, and that the passage of the ordinance would defeat the new constitution when submitted to the people. By a vote of 69 to 24 the convention refused to pass the ordinance. Consequently, the convention of 1875, more than any previous convention in Alabama, adhered to the subject of writing a constitution. *Journal of the Convention of 1875,* 24-25, 44-45; Mobile *Register,* September 14, 15, 17, 1875; Montgomery *Alabama State Journal,* September 12, 1875.

[27] *Journal of the Convention of 1875,* 23.

[28] *Ibid.,* 40-43, 46-55; Montgomery *Alabama State Journal,* September 11, 17, 1875; Mobile *Register,* September 12, 1875.

[29] *Journal of the Convention of 1875,* 50; Mobile *Register,* September 12, 1875.

[30] Mobile *Register,* September 12, 18, 1875. The wording of this section had been one of the main controversies in the convention of 1865.

[31] *Ibid.,* September 26, 1875.

> . . . Alabama is a free and independent State, subject to the Constitution of the United States; and, as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to co-exist with it, the General Assembly is not authorized to adopt, nor will the people ever assent to, any amendment of the Constitution of the United States which may, in any wise, impair the right of local self government belonging to this State.[33]

Leading members of the convention finally persuaded Langdon to withdraw the section before it came to a vote.[34] They argued that the adoption of the section would invite federal intervention and endanger the success of the constitution when submitted to the people.

That portion of the majority report which provided that the state could not be sued in any court of law or equity was adopted after bitter debate.[35] Its proponents frankly admitted that it was intended to prevent suits against the state for the debt made by the Radicals.[36] Francis Strother Lyon, who had been commissioner to liquidate the state bank debt in 1845, declared that he favored the payment of every just and legal claim but that debts had been created which the legislature should look into before payment. In the meantime, he argued, the state would be protected from suit.[37] The Republicans and some Democrats opposed the section. Samuel Farrow Rice, Republican leader, was opposed, declared the Mobile *Register,* because he was an attorney for railroads that wanted to bring suit against the state.[38] William Calvin Oates moved to allow suit against the state if agreed to by a two-thirds vote of the legislature.[39] This motion was voted down and the section adopted.[40]

The convention adopted the remainder of the majority report with little opposition or change. Foreigners were given equal privileges and rights in Alabama with native born citizens and a later section specifically declared "that immigration shall be encouraged."[41] Another section provided against any educational or property qualification for suffrage or office, or any restraint upon either because of race, color, or previous condition of servitude. The convention struck out a section in the majority report taken from the Radical Constitution of 1868, which provided that conscientious objectors might pay an equivalent in money instead of bearing arms. It was argued that this was "discriminative against the poor men of the State."[42]

---

[32] *Journal of the Convention of 1875,* 53.

[33] *Ibid.*

[34] Langdon had been a Whig and strong Union man before the war, but since the war had become appalled at the growth of federal power. Mobile *Register,* September 21, 1875.

[35] *Ibid.,* September 17, 18, 1875.

[36] *Ibid.,* September 18, 1875.

[37] *Ibid.*

[38] *Ibid.,* September 17, 1875.

[39] *Journal of the Convention of 1875,* 43.

[40] *Ibid.,* 43, 47.

[41] *Ibid.,* 50.

The report of the committee on the legislative department[43] provided for biennial sessions of the legislature limited to fifty days;[44] forbade the state to lend its money or credit for internal improvements, or to any individual, association or corporation; forbade the counties, cities, or towns of Alabama to aid with money or credit any individual, association, or corporation; fixed the number of senators and representatives at not more than thirty-three and one hundred respectively; exempted property belonging to schools, churches, charities, and horticultural societies from taxation; fixed the pay of members of the legislature at $4 *per diem* plus a ten cent mileage (a considerable reduction from the pay set by the Reconstruction legislature); restricted local and special legislation; and provided that the capital could not be moved from Montgomery except by a majority vote of the people at a general election. It also forbade the legislature to authorize lotteries; required the Senate and the House of Representatives to meet at the capitol in the Senate chamber and the hall of the House of Representatives respectively; provided that in special sessions the legislature could consider only those subjects designated in the proclamation of the governor; changed the mode of impeaching judicial and county officials; reinstituted the policy of holding state elections on the first Monday in August rather than in November in order to prevent federal intervention; wrote back into the constitution such residence requirements for members of the legislature as existed prior to 1868; prohibited duelling; and added innumerable sections to the legislative article, all of which sought to restrict or limit the legislature in regard to details of legislation and legislative procedure, to protect the integrity of the legislature, and to protect the people from corruption. Because of these sections the report of the committee almost doubled the length of the legislative article in any previous Alabama constitution.

The report on the legislature was adopted with some minor changes and a few additions. The provision requiring the Senate and the House of Representatives to meet in the Senate chamber and the hall of the House of Representatives respectively, was adopted because of the fight in 1872-1873 between the Democratic "Capitol Assembly" and the Radical "Court House Assembly"[45] and like so many other sections of the Constitution of 1875 reflects the state's recent history. The Democrats had elected a majority of the legislature in November, 1872, but the Radical minority refused to meet with them and met in the Montgomery County court house. With aid from Washington the Radicals won the fight and Democrats now wished to write into the state's constitution a ban against future "Court House Assemblies."[46]

---

[42] Mobile *Register,* September 18, 1875.

[43] *Journal of the Convention of 1875,* 57, 80-92, 96-105, 117-118.

[44] Biennial sessions were adopted in the interest of economy. Every previous Alabama constitution had provided for annual sessions, but by amendment to the Constitution of 1819 Alabama had biennial sessions from 1844-1861.

The prohibition against state, county, or city aid for internal improvement companies or corporations provoked bitter debate before its adoption.[47] The Democrats declared that sections 32 and 33 of Article IV of the Radical Constitution of 1868, which provided that the state might with a two-thirds vote of the legislature lend its aid and credit to internal improvement companies and corporations, were the worst sections ever written into the constitution of any state.[48] A committee of the convention reported that under section 32 which allowed state aid, Alabama had endorsed between $14,000,000 and $20,000,000 worth of railroad bonds. The state debt had risen from less than $7,000,000 to $29,000,000.[49] Railroads had received aid from the counties and towns of the state to the extent of $2,550,000.[50] The Republicans countered by saying that the practice of endorsing railroad bonds had been begun by the Democrats before 1867, and that Robert Burns Lindsay, Democratic governor from 1870-1872, had been responsible for more endorsements than the Republicans.[51] Many of the bonds which the state had endorsed, the Republicans argued, were still valuable. Democrats agreed that new sections absolutely forbidding state, county, or city aid to corporations was the most important reason for a convention. The vote of the people in calling a convention had been a referendum on this and other questions, the Democrats said, since the party had pledged itself in the campaign. Hence they silenced Republicans with the previous question and adopted this provision.

---

[45] Mobile *Register,* September 15, 1875.

[46] *Ibid.*

[47] *Journal of the Convention of 1875,* 101, 109.

[48] Mobile *Register,* October 22, 28, 1875; Skinner, *Alabama Constitution Annotated,* 445-446. Levi Lawler, one of the commissioners to adjust the state debt said that an absolute prohibition against state aid to corporations alone was enough to justify the trouble and expense of holding a convention. Mobile *Daily Register,* July 7, 1875. Actually, prior to the Constitution of 1868, state aid was pledged by a mere majority of the legislature. For example, during Governor Robert Winston's administration (1853-1857), the governor's veto alone prevented the legislature from pledging large sums to railroads. The Radicals had intended the two-thirds majority vote as a check, but time had proven it insufficient.

[49] *Journal of the Convention of 1875,* 35; Ralph B. Draughon, A History of Alabama Bond Issues, 27 (unpublished Master's thesis, Alabama Polytechnic Institute, 1929); A. B. Moore, "Railroad Building in Alabama During the Reconstruction Period," *Journal of Southern History,* I (November, 1935), 437.

[50] Draughon, A History of Alabama Bond Issues, 29.

[51] Montgomery *Alabama State Journal,* October 20, November 6, 9, 1875. Levi Lawler, one of the Democratic commissioners to adjust the state debt, admitted privately that because of his party's complicity in the railroad-bond legislation, "We, the commissioners, and the party, are environed with embarrassments of no ordinary magnitude." Levi W. Lawler to Robert McKee, June 12, 1875. McKee collection, Department of Archives and History, Montgomery, Alabama. The report of the debt commissioners showed Democratic Governor Lindsay's administration in part responsible for the large debt. Furthermore, the administration of Governor Robert M. Patton (elected under the Constitution of 1865) had set prece-

The proviso that the state capital could be moved only after a majority of the voters had agreed to removal in a general election was introduced by Daniel Boone Booth, a Republican from the Black Belt, and adopted by the convention.[52] Some Democrats had urged the removal of the capital from Montgomery in order to escape Radical influences. If Montgomery wanted "to retain the State capital [said the Mobile *Register*] she better get rid of the negro, carpetbag, municipal and county government which she has had since 1868."[53] Although a Republican measure, Democrats made this concession to Montgomery, hoping to win the support of the Black Belt counties for ratification.

The convention of 1875 weakened the constitutional provisions against duelling. The Radical constitution had provided that anyone guilty of duelling should be forever disqualified from holding office. This proviso was retained by the committee but the convention struck it out and adopted a section similar to that in earlier Alabama constitutions instructing the legislature to pass laws suppressing the evil practice of duelling.[54]

Democrats wrote into the new constitution innumerable restrictions on the legislature, claiming they had been made necessary by the Carpetbag era.[55] Special sessions of the legislature were limited to subjects included in the governor's call.[56] No person convicted of embezzlement, bribery, perjury, or other crimes could be a member of the legislature or hold any state office in Alabama; punishment was provided for the legislator, executive, or judicial officer who accepted a bribe; a legislator once expelled could never again serve in the legislature; no legislator

---

dent for the ensuing Radical state aid to railroads, when by act of February 19, 1867, the state endorsed bonds of railroad companies to the extent of $12,000 per mile for each twenty miles built. L. D. Miller, *History of Alabama,* 253-254; Draughon, A History of Alabama Bond Issues, 25, 27.

[52] *Journal of the Convention of 1875,* 28, 97.

[53] Mobile *Register,* April 17, 1875.

[54] *Journal of the Convention of 1875,* 99, 162.

[55] *Ibid.,* 85-87, 91-97, 99.

[56] The 1868 Radical legislature held one regular and two special sessions in one year. This regulation would give the governor additional controls over special sessions. Even the Republican governors in Alabama during the Reconstruction period were held in higher esteem by the Conservatives than the legislatures. This section would also discourage special sessions, which now that biennial sessions of the legislature had been provided for, might become frequent and thus defeat the savings which biennial sessions would bring.

having a personal interest in a bill could vote thereon; a bill could not be amended or altered on its passage through either house so as to change its original purpose; no bill could be passed giving any extra compensation to any public officer; contracts for stationery, printing, paper, fuel, and other articles should go to the lowest bidder, not connected with the state; and the pay of members of the Legislature ($4 per diem plus a ten cent mileage) was written into the constitution for the first time.[57] The Mobile *Register* declared these legislative sections had not the "remotest relevancy to a State constitution," and would not have been included except for the state's recent past.[58]

> It would seem [said the Louisville *Courier-Journal*] to be a very difficult matter for a rogue to evade the numerous safeguards of this new constitution. The various sections are full of suggestions of the history of the Southern people since the war; for example, the legislators are completely cut off from legislating themselves into office and back pay, and are referred back to their constitutents before they may enjoy the fruits of schemes that were once so profitable. Trickery in legislation is also provided against in the section, that no law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.[59]

The recommendations of the legislative committee in regard to impeachments[60] were placed in a new article. All state executive officials and members of the Supreme Court were subject to impeachment and removal by the legislature. But chancellors, circuit judges, probate judges and solicitors were to be removed from office by the Supreme Court and county officials by the Circuit Court.[61] Previously the legislature had been responsible for the impeachment and removal of minor officials, but impeachments had "amounted almost to a nullity. The great expense incident to trials of impeachment cases by the legislature deterred the preferment of articles against offending officials."[62] Robert Anderson McClellan of Limestone County expressed the view of the majority when he declared that the supreme and circuit court judges were better adjudicators of the competency of the officials involved than the legislature.[63] Opponents of the new plan said they "did not want any part of the judiciary of the State to sit in judgement over another part." Such a practice, they argued, would strike at the independence of the judiciary and overwork the courts. It would also deny trial by jury.[64]

---

[57] Constitution of 1875, Article IV, Sections 6, 18, 30, 40-43; Skinner, *op. cit.*, 366, 429-431. By statuatory enactment during the Radical period, legislators received $6.00 per day and forty cents per mile. With the fifty day limitation, the $4 per diem proviso reduced the cost of each biennial session to about half the cost of each annual session under the Radical constitution. Going, *op. cit.*, 83.

[58] Mobile *Register,* September 16, 1875.

[59] Quoted in *ibid.,* October 8, 1875.

[60] *Journal of the Convention of 1875,* 101-102.

[61] Skinner, *op. cit.,* 650.

[62] Mobile *Register,* October 3, 1875.

[63] *Ibid.,* September 25, 1875.

The report of the committee on the executive department[65] abolished the office of lieutenant governor; lengthened the term of all executive officials from two to four years; provided for long residence requirements for all executive officials; fixed state elections in August instead of November; prohibited the governor and state treasurer from succeeding themselves; required the governor to be at least thirty-five and all other executive officials twenty-five years of age; and set up a pardon board to aid the governor in granting pardons. It also provided that a two-thirds majority instead of a simple majority of the legislature was necessary to over-ride the governor's veto; stipulated that the governor might veto parts of an appropriation bill; and like the Radical constitution provided for popular election of all executive officials.

The length of the term of governor and other executive officials became the most important issue in regard to the executive department.[66] George Paul Harrison made a minority report in favor of a two-year term for all executive officials.[67] Thomas Hord Herndon, chairman of the executive committee, led the group that favored the four-year term and argued that if sessions of the legislature were to be biennial a two-year term would always insure an inexperienced governor in dealing with the legislature.[68] A four-year term would enable the governor to give the people the benefit of his experience and work out a stable program for his administration. The opponents of a four-year term argued that it was undemocratic, that the people wanted to pass on a governor at the end of two years.[69] They declared that this question had not been made an issue in the campaign and that it might defeat the new constitution when submitted to the people. The convention rejected the committee report[70] and adopted a two-year term for executive officials. In fact the convention rejected many of the committee's recommendations. It struck out the prohibition against the governor and the secretary of treasury succeeding themselves; provided that a simple majority rather than a two-thirds majority might over-ride the governor's veto. It struck out the recommendation that the secretary of state, attorney-general, and auditor constitute a board of pardons to advise the governor; reduced the age requirement for governor from thirty-five to thirty years; but agreed with the report in abolishing the office of lieutenant governor. It was provided that the president of the Senate and then the speaker of the House should succeed the governor.[71] The convention accepted the recommendation that the governor be allowed to veto part of an appropriation bill.[72] This reform had been a feature of the Confederate Constitution, and had been recently adopted by several states.[73] Its adoption greatly increased the governor's power over financial legislation, but the convention had in general reduced the executive power from what the committee had recommended.

---

[64] *Ibid.*

[65] *Journal of the Convention of 1875,* 62-76.

[66] Mobile *Register,* September 15, 19, 22, 23, 1875.

[67] *Ibid.,* September 21, 1875; *Journal of the Convention of 1875,* 46.

[68] Mobile *Register,* September 19, 21, 22, 23, 1875.

[69] *Ibid.,* September 19, 21, 1875.

[70] *Journal of the Convention of 1875,* 64. The four-year term was rejected by a vote of 55 to 31.

The report of the committee on the judiciary, of which William C. Oates was chairman, provided for the popular election of judges for six-year terms and the election of solicitors by the General Assembly for three years.[74] A majority of the convention wanted to give the election of judges to the General Assembly, or to provide that they should be appointed by the governor with the consent of the Senate, but were restrained from doing so by the fear that it would defeat the new constitution when submitted to the people.[75] The popular election of all judges had been provided for by the Radical Constitution of 1868. Neither Oates nor a majority of his committee were in sympathy with the election of judges by the people,[76] but they recognized that the Democratic party was pledged to popular election and to provide otherwise might defeat the new constitution. It would be foolish to endanger "the whole program of retrenchment and economy" by taking from the people the election of judges, many of the delegates argued.[77] They claimed that, with the exception of the local judges elected in the Black Belt by Negro votes, all judges elected by the people in 1874 were competent and efficient. The integrity of the judiciary could be preserved, some maintained, if the Conservative party's conventions would choose only good candidates for judges.[78] Election of judges by the people was adopted without a roll call vote.[79] A large minority in the convention wanted solicitors to be elected by the people as under the Radical constitution.[80] They argued that the adoption of the report which gave the election of solicitors to the legislature might defeat the new constitution.

[71] *Ibid.*, 72.

[72] *Ibid.*, 71.

[73] It is contained in the Illinois Constitution of 1870 and Missouri Constitution of 1875.

[74] *Journal of the Convention of 1875*, 105-108, 120-131.

[75] Mobile *Register*, September 18, 30, October 8, 1875.

[76] William Mark Hames attacked the election of judges by the people. Oates said he agreed with every word Hames said. *Ibid.*, September 30, 1875. The Mobile *Register*, October 5, 1875, quoted Oates to the effect that "the constitution that has been framed is as good as the public of the period is ready for."

[77] *Ibid.*, September 18, October 8, 1875.

[78] *Ibid.*, September 18, 1875.

[79] *Journal of the Convention of 1875*, 122.

[80] The convention refused to provide for election by the people by a vote of 58 to 28. *Journal of the Convention of 1875*, 139.

But, the Democratic party had not pledged itself in the campaign for the convention on this issue and the report was adopted.[81] In the interest of economy, the convention limited the number of judicial circuits to eight, providing that each circuit should contain not less than three nor more than twelve counties.[82] For the same reason, it abolished county solicitors and gave each judicial circuit a solicitor, thus reducing the number of solicitors by more than half.[83] Oates sought in vain to abolish the chancery courts and assign all cases in equity to the circuit courts.[84]

Suffrage was not an issue in the convention of 1875. The Democratic party had pledged itself not to adopt any property or educational qualifications for voting. And there was too much danger of federal intervention in 1875 for the convention to seek to deny the Negro the suffrage. The convention incorporated a section in the bill of rights recognizing the Fifteenth Amendment. It restored the residence requirements for voting abolished by the Radicals in 1867, and struck out the "odious registration oath."[85] Those sections in the Radical constitution disfranchising certain classes in Alabama were also striken out.[86] Because of the danger of federal intervention, sections segregating the races on common carriers or forbidding their intermarriage (both issues had been important in 1865 and 1867) were not even seriously considered by the convention.

The committee on elections and basis of representation reported an article[87] which provided that the number of senators should be 33 and the number of representatives 100; reduced the representation of Black Belt counties which were Republican and increased the representation of some Democratic counties; and abolished the state census, which had always been the basis on which apportionment had been made. A minority report provided that the number of senators should be 25 and the number of representatives 75.[88] Advocates of reducing the size of the Senate and House argued that it would be economical and make the General Assembly a more efficient body.[89] Its opponents, the delegates from the heavily populated counties, declared that representation in Alabama was already on a "territorial" rather than a population and wealth basis, and that a reduction in the size of the General Assembly would make this injustice to the heavily populated counties even greater.[90] Leroy Brewer, delegate from Mobile, said that Mobile County had 12,800 voters and paid one-sixth of the taxes of the state. Yet, the minority report would give her only three representatives. Twelve other counties not having in the aggregate as many voters and not paying one-tenth of the same amount of taxes would have twelve representatives, giving to those with less taxable property and less population four times the voting power of Mobile County.[91] The convention voted 55 to 35 against the minority report and adopted the report of the majority, which would decrease the number of Republican members of the legislature.[92] The Black Belt Republican counties of Barbour, Bullock, Lowndes, Perry, Wilcox, and Sumter were reduced from three to two representatives and Dallas and Montgomery from five to four representatives. The convention provided that henceforth the federal census would be used as the basis for representation in the state legislature.[93]

---

[81] *Ibid.*

[82] *Ibid.*, 106. The Constitution of 1868 provided that a judicial circuit should consist of not less than three nor more than eight counties.

[83] *Ibid.*, 139. The Radical Constitution of 1868 had been the first to provide for county solicitors.

[84] Mobile *Register*, September 29, 1875.

[85] *Journal of the Convention of 1875*, 57-58; Mobile *Register*, October 5, 1875.

[86] Even in 1868, the Radical legislature had passed a law by which the suffrage disabilities of many citizens of the state were to be gradually removed, thus increasing the white vote, which was in part at least responsible for the election of Democratic Governor Robert Burns Lindsay in 1870. Fleming, *op. cit.*, 749.

[87] *Journal of the Convention of 1875*, 93-95.

[88] *Ibid.*, 95.

[89] Mobile *Register*, September 29, 1875.

The report of the committee on finance and taxation[94] recommended economy in every branch of the government. It prohibited state aid to internal improvement companies or corporations; forbade the state to make any debt except to suppress insurrection, rebellion, or invasion; reduced the salaries of all state executive officials and superior judges by twenty-five per cent; limited state taxation to seven and one-half mills on the dollar, and county, city, or town taxation to one-half of one per centum with certain exceptions.[95] The report said:

> The committee on finance and taxation . . . have examined into the condition of the treasury, which they find almost exhausted, and have looked into the financial condition of the State, which is absolutely appalling. They find the total indebtedness of the State to be about $29,000,000, and the total value of taxable property about $159,000,000. That it would require nearly

---

[90] *Ibid.,* September 29, October 8, 1875.

[91] *Ibid.,* October 8, 1875.

[92] *Journal of the Convention of 1875,* 94, 120; Montgomery *Alabama State Journal,* September 25, 1875.

[93] *Journal of the Convention of 1875,* 93, 120.

[94] *Ibid.,* 35-39. The report listed in detail some $29,000,000 of the state's "formidable indebtedness to convince the creditors of the state that full payment is impossible. . . ." *Ibid.,* 37.

[95] The city of Mobile was allowed to levy a tax of one percentum until January, 1879, and after that a tax of three-fourths of one percentum to pay the existing indebtedness of the city and another such tax to pay expenses of the city government. Constitution of 1875, Article X, section 7. Counties were authorized to levy a special property tax of one-fourth of one percentum and cities, towns, or municipal corporations (other than Mobile) a special property tax of one percentum in order to pay existing indebtedness. Most counties secured some adjustment on the county debt even as there was an adjustment in the state debt. However, the state had to give special assistance to five "strangulated" counties (Chambers, Lee, Pickens, Randolph, and Tallapoosa), all of which were unable to work out their debt problem. Constitution of 1875, Article X, sections 5 and 7; Skinner, *op. cit.,* 449; Moore, *op. cit.,* 495; Going, *op. cit.,* 77.

> 20 per cent. of the entire taxable property of the State to liquidate the debt. This would indeed be appalling were it not for the hope of an adjustment, held out to us by the commissioners appointed to adjust the public debt, by which Alabama may be relieved from this heavy burden which is crushing the energies of her people. . . . It is only necessary to present this statement of formidable indebtedness to convince the creditors of the State that full payment is impossible, and that the State can never resume the payment of interest until the debt is adjusted and reduced, so as to correspond with our diminished resources. But in the face of this dark feature it affords us pleasure to state that the commissioners are sanguine of their ability to reduce the entire indebtedness of the State, exclusive of the educational and trust funds, to a sum not exceeding $10,000,000, the interest on which will not exceed $420,000 per annum. . . .
>
> We believe, with these economical views fully carried out, and the contemplated compromise consummated, with this rate of taxation fixed at three-fourths of one per centum as a maximum, that our State will once more gain her deserved prosperity; that capital, seeing that our debt is reduced and our taxing power limited, will seek investment in our cheap lands, and population, always following capital, will fill up our waste places; that our property will enhance in value and a rapid reduction of the rate of taxation may be had, with yet sufficient revenue to meet an economical administration and pay interest on the public debt.[96]

State finances, responsibility for the state debt, limitation of taxation, repudiation of the railroad bonds, retrenchment and economy in government, and salaries of state officials were the important issues in the debate on the taxation article. Republicans charged that Bourbon Democrats wanted to repudiate all debts, even those made by Democratic administrations.[97]

The committee on finance and taxation had the advice of the commissioners to adjust and liquidate the state debt in the preparation of their report.[98] The commissioners advised that the limit on taxation could not be placed below three-fourths of one per centum, the figure in effect during Radical Reconstruction, without defeating their efforts to adjust and liquidate the debt.[99] Any figure under three-fourths of one per centum would force outright repudiation of much of the debt. Several leading Democratic members of the convention wanted to repudiate all the railroad bond debt.[100] Harrison and Oates, speaking for the agrarian element in the convention, led the fight to turn over to the purchasers the railroad bonds which the state had under-written and let the purchasers secure from these bonds what they might.[101] This plan would relieve the state of at least half of its indebtedness. The Mobile *Register* paraphrased Harrison's speech in favor of this plan as follows:

---

[96] *Journal of the Convention of 1875*, 35.

[97] Montgomery *Alabama State Journal*, October 20, November 6, 1875, January 21, 1876; Mobile *Daily Register*, September 12, 1875.

[98] *Journal of the Convention of 1875*, 36. This commission was composed of Governor George S. Houston, Levi W. Lawler of Talladega and Tristam B. Bethea of Montgomery. The commissioners wanted a compromise, but did not want repudiation. Governor Houston had persuaded the legislature to turn the debt settlement over to a commission instead of the convention, because he feared repudiation by a convention in which the agrarian sections of the state would be in a majority.

[99] Mobile *Register*, September 29, October 5, 1875.

> It proposes to settle in part at least, the vexed question of what is the just indebtedness of the State. It is a quesion in which the people are deeply interested; and one, which he conceived it the duty of this convention to settle now. For one, he was prepared to meet the issue, and say to the holders of these bonds, as well as all the world besides, that in these, he recognized no moral or legal obligation. The many frauds and iniquities attendant upon the origin and issuance of these bonds, were too fresh in the minds of all for him to relate; besides, the limit of time prescribed, forbids the undertaking. Justice to the honest creditors of the State demands that their claims should not be placed in hotch potch with those covered by the proposed section, but that they should be separately considered and differently provided for. Leave the just indebtedness in the hands of the commissioners, let them make the best adjustments of such in their power. Alabama will pay upon these as far as she is able. But upon such as are fraudulent she will never willingly pay one dollar. This section provides that all collaterals held by the State for her pretended endorsement of any of these bonds shall be transferred to the holders of the same. No injustice will be done, it is all they could in justice ask, it is all they will ever receive. Give the people an opportunity to speak and they will settle these railroad bonds forever![102]

Rufus W. Cobb, close friend of Governor George S. Houston and his successor, in opposing repudiation by the convention, spoke for the governor and the commercial-industrial interests in the state. Not only would the credit of the state be ruined, he argued, but the convention did not have jurisdiction over debt adjustment, since the last legislature had set up the debt commission.[103] The convention voted against including a provision in the new constitution repudiating the railroad bonds.[104] But advocates of repudiation were able to secure the adoption of a proviso reducing the tax limit from seven and one-half mills on the dollar to five mills after the expiration of five years.[105] Debate on the subject of the tax limit and repudiation was exceedingly bitter. Republicans declared that even a tax limit of seven and one-half mills on the dollar meant repudiation.[106] Some Democrats insisted that the convention repudiate the railroad bonds, others that the whole question be left to the commissioners, a responsibility conferred on them by the last legislature. After the article had been referred to the committee on order, consistency, and harmony of the whole constitution, the commissioners again warned that adoption of the five mills on the dollar limit would force repudiation.[107] The committee referred it back to the convention and urged that the provision be striken out and the seven and one half mills limit inserted, to which the convention agreed.[108] The convention adopted the limits on county and city taxation recommended by the report of the committee. After the ratification of the new constitution, no debt could be made except to repel invasion and that by a two-thirds vote with the yeas and nays being taken and recorded in the journal.[110]

---

[100] *Journal of the Convention of 1875,* 110; Mobile *Register,* October 5, 1875. Delegate C. C. Langdon wrote: "I will never consent for the people to be taxed for the payment of one dollar of those fraudulent bonds and I want the constitution to protect them from the flagrant wrong that some of the wise men of our party would put upon them." C. C. Langdon to Robert McKee, August 30, 1875. McKee collection, Alabama Department of Archives and History.

[101] Mobile *Register,* September 29, October 5, 1875. Robert McKee, editor of the *Southern Argus,* the leading journal of the Grange in the state also wanted drastic repudiation. Montgomery *Alabama State Journal,* February 19, 1876; Going, *op. cit.,* 70, 74.

[102] *Ibid.,* October 5, 1875.

[103] *Ibid.,* September 29, 1875. Governor Houston and Cobb were both interested in Alabama railroads. Cobb, who was attorney for the L and N railroad and president of Central Iron Works at Helena, Alabama, framed the debt settlement plan for Houston under which as many railroad bonds as possible were redeemed by the state. Owen, *op. cit.,* III, 357; Bond, *op. cit.,* 54-55; Woodward, *op. cit.,* 9-10.

There was much opposition to the writing of a twenty-five per cent reduction of the salaries of all state executive officials and superior judges into the constitution.[111] It was argued that this was a legislative matter and should be left to the legislature; that able men could not afford to hold state office after the reduction. But the convention decided that the need for economy justified the constitutional provision, and required that the next legislature reduce the salaries of these officials by twenty-five per cent or more.[112] A proviso was added, allowing the salaries to be increased after reduction by a majority vote of the legislature, which the Mobile *Register* characterized as demagoguery.[113]

---

[104] *Journal of the Convention of 1875,* 111. The delegates also defeated an agrarian proposal to prohibit the use of tax money for the payment of interest or principal on railroad bonds. *Ibid.,* 64; Going, *op. cit.,* 71.

[105] *Journal of the Convention of 1875,* 111.

[106] *Ibid.,* 112; Montgomery *Alabama State Journal,* October 27, November 13, 1875.

[107] Mobile *Register,* October 5, 1875.

[108] *Ibid.; Journal of the Convention of 1875,* 163. Although the constitutional tax limit was placed at three-fourths of one per cent Bourbon Democratic legislatures reduced the limit to seven mills in 1877 and in 1880 to six and one-half mills. Going, *op. cit.,* 183.

[110] Constitution of 1875, Article X, section 3. The governor was authorized to negotiate a temporary loan up to $100,000.

[111] Mobile *Register,* September 16, 28, 1875.

[112] *Journal of the Convention of 1875,* 116. The legislature of 1876 reduced the governor's salary of $4,000 to $3,000 and those of all other elective officials accordingly. Going, *op. cit.,* 80-81.

[113] Mobile *Register,* September 28, 1875.

Edward A. O'Neal, chairman of the committee on education, brought in a report which abolished the Board of Education; provided for a state superintendent of education elected by the people; required that separate schools be established for Negroes and whites; set aside certain funds for educational purposes; and stipulated that not more than four per cent of the school funds could be used or expended otherwise than for the payment of teachers.[114] Democrats had made the destruction of the Board of Education one of the main reasons for calling a convention. Charges of inefficiency and illegal use of funds by the Board had been rife under Radical Superintendent Noah B. Cloud.[115] Since it was somewhat of an anomaly in government and a creation of the Radicals,[116] the Board was not popular even under Democratic Superintendents of Public Instruction Joseph Hodgson or John M. McKleroy. Although defended by the Republican press, Republicans in the convention apparently thought it useless to speak for the Board. And, only one delegate, a Negro, spoke in opposition to the provision for segregation of the races in the schools.[117] The report of the committee provided that at least $100,000 annually, the poll tax fund, interest on the trust fund, interest on the surplus revenue fund, and the money from the estates of deceased persons who die without heirs, should be set aside for public schools, much less than the revenue provided by the 1868 constitution.[118]

[114] *Journal of the Convention of 1875,* 152-158.

[115] *Report of the Judiciary Committee to whom was Referred the Resolution of Inquiry into Alleged Illegal Use, or Unlawful Application of . . . School Fund* (Montgomery, 1870). This committee charged Cloud with the misappropriation of between $5,000 and $6,000 in Mobile County and recommended "the abandonment of the special legislature [the Board] at the earliest moment . . . by an amendment of the constitution." Actually, Cloud had used public school funds to subsidize parochial and private schools in Mobile, common practice in the antebellum era.

[116] The Board of Education kept a journal like the legislature in which its activities and laws in regard to education were recorded. See *Journal of the Board of Education of the State of Alabama,* 1869-1875. The journal was printed annually in Montgomery but the copy in the Alabama Department of Archives and History is now bound in one volume. The Board created free schools, chartered colleges for Negroes and whites, appointed county superintendents, made appropriations and in general was the law making as well as the administrative center of the state's school system.

[117] The convention voted down a "provision requiring equal facilities for education to be provided white and colored children in separate schools." Mobile *Daily Register,* October 3, 1875. "When . . . [the Bourbons] assert [wrote the editor of the Montgomery *Alabama State Journal,* March 25, 1876] that they refuse to tax the white property owners for the education of the Negroes, they only exhibit the malice in their hearts against a race which toiled and struggled for them in the days of slavery." The editor also quoted the Cullman *Immigrant,* newspaper of the recently founded German colony at Cullman, Alabama, against "the picayunish appropriations" for schools.

[118] Democratic State Superintendent of Public Instruction John M. McKleroy opposed drastic action against the centralized school system of the 1868 constitution or the liberal appropriations provided for therein. He outlined the work of the schools for the convention and thought the 1868 constitution had been responsible

Republicans charged that the funds provided were too meager and that the public school system would be destroyed.[119] They sought to write the 1868 provision of "one-fifth of all the annual revenue"[120] into the constitution. Democrats admitted that the money earmarked for schools was less than that in the Constitution of 1868, but declared schools would actually receive more because of more efficient administration.[121] In no year since 1868 had the schools received one-fifth of the annual revenue of the state, the Conservatives declared.[122]

Furthermore, Conservatives charged that much of the money under the Constitution of 1868 had been spent uselessly in maintaining the highly centralized system (the Board of Education, state and county superintendents of education).[123] Numerous Democrats joined Republicans in objecting to the provision that not more than four per cent of the school fund could be spent otherwise than on the payment of teachers.[124] The office of county superintendent would be abolished because there would be no money to finance it, they declared.[125] As a result the convention provided that the General Assembly might suspend the four per cent limit by a two-thirds vote of each house.[126] Beginning in 1854, Mobile County had levied a special liquor tax for the support of public schools, which in other parts of the state went into the general fund. Charles C. Langdon of Mobile secured a section providing that this fund "shall remain undisturbed until otherwise provided by the General Assembly."[127]

---

for the fine showing the schools made during his first year in office. However, the convention did not take his advice and under the new constitution the state returned to the decentralized school system which had existed prior to the Radical constitution (established by law of 1854) and funds were reduced to accord with the Bourbon policy of retrenchment. Mobile *Daily Register,* September 21, 1875. The last year under the 1868 constitution the school revenue amounted to $484,000 as contrasted with $348,891 for the first year under the 1875 constitution. Going, *op. cit.,* 148, 151.

[119] Mobile *Register,* September 21, 28, October 2, 1875. "Captain Otis D. Smith, of the Board of Education, [said the Mobile *Register*] is pegging away through the columns of the Montgomery *Advertiser* in favor of a liberal school system. No use, Captain! The convention don't see no use in so much schooling, no how." Mobile *Register,* September 16, 1875.

[120] *Ibid.,* October 2, 1875; *Journal of the Convention of 1875,* 152.

[121] Mobile *Register,* September 21, October 2, 1875.

[122] *Ibid.,* October 2, 26, 1875.

[123] A minority in the convention wanted to abolish the state and county superintendents of education and turn their duties over to the secretary of state and local trustees respectively. Others wanted the state auditor and county commissioners to assume responsibility. Mobile *Daily Register,* September 15, 17, 1875.

[124] *Ibid.,* October 2, 3, 1875.

[125] Under the new system the county superintendents as previously were provided for by law, but became little more than disbursement agents to distribute funds. They received only $75 annually plus one per cent of all funds distributed in the county. Going, *op. cit.,* 149.

[126] *Journal of the Convention of 1875,* 154.

[127] *Ibid.,* 157; Mobile *Daily Register,* October 2, 3, 1875. The convention, under

The article on exemptions aroused great diversity of opinion and sentiment.[128] The Democratic party had pledged that the exemption clauses of the Constitution of 1868 would not be changed. However, it took the full power of the caucus to keep the Democrats in line as more than a dozen delegates introduced sections on the subject.[129] Some wanted no exemption article in the constitution as it was a legislative matter and should be left to the legislature as it was prior to the Radical constitution. Some wanted to decrease and others to increase the amount of real and personal property exempted.[130] Delegates representing commercial interests wished to strike out any distinction betwen real and personal property.[131] The committee proposed a new section "allowing persons to waive exemptions by an instrument in writing," because it would allow the poor man to secure credit without going to the expense of a mortgage.[132] The convention adopted the "waiver" section but left the article on exemptions otherwise unchanged.[133]

The convention made the amending process easier. It permitted the legislature to submit an amendment by a two-thirds vote, which ratified by the people became a part of the constitution.[134]

Considerable agrarian distrust of railroads came to light during the session of the convention.[135] The convention showed its hostility to the railroad and other industrial interests in the state (as well as its distrust of the Carpetbag era) by placing a constitutional prohibition on the state, or any county or city in the state, engaging in, or lending its money or credit to, works of internal improvements. Later, many drastic proposals for railroad regulation were made to the convention by the committee on corporations.[136] However, the convention rejected most of

---

Edward A. O'Neal's leadership, memorialized Congress to grant an additional section of land in each township to public schools, since the state was burdened with a debt on $29,000,000, its taxable property valued at only $159,000,000, and its Negro population ignorant and only recently emerged from slavery. The memorial also pleaded for additional lands for the University, since the $300,000 arising from the sale of lands earlier given by Congress had been lost in the failure of the State Bank (1842) and the University and all its equipment burned to the ground during the Civil War. *Journal of the Convention of 1875,* 212-214. The convention also provided for a board of trustees for the University and the Alabama Agricultural and Mechanical College at Auburn. The site of neither could be moved without a two-thirds vote of the legislature. Article XII, sections 9-10.

[128] Mobile *Register,* October 1, 2, 1875.

[129] *Ibid.,* September 29, October 2, 1875.

[130] *Ibid.,* September 29, October 2, 1875. [131] *Ibid.,* September 29, 1875.

[132] *Journal of the Convention of 1875,* 173.

[133] The section guaranteeing the ownership of property by married women remained.

[134] *Journal of the Convention of 1875,* 158.

[135] The first legislatures under the new constitution were dominated largely by Grangers and farmers. Going, *op. cit.,* 208.

[136] *Journal of the Convention of 1875,* 134-135. One delegate declared that members of the legislature of Alabama had been "bought like sheep" by railroads in the past and that corruption ought to be "arrested and rooted out." Montgomery *Alabama State Journal,* October 1, 1875.

them (some by narrow votes) and adopted a provision recognizing the need for regulatory legislation, but leaving to the legislature itself the task of forming such laws.[137] Moreover, railroads were forbidden to grant free passes to public officials or to charge more per mile for a short haul than for a long haul. And rebates were forbidden.[138]

Although done in the name of economy, agrarian distrust of commercial-industrial enterprise was also reflected in the abolition of the office of commissioner of industrial resources created by the Radical Constitution.[139] Since this office was also charged with certain services to the farm population, agriculture also suffered when the office was abolished. The new constitution provided against creating any state office for the "inspection or measuring of any merchandise, manufacture, or commodity," by which the convention intended to abolish "useless clerks and offices" of the Radical period, but which later also prevented the creation of a state fertilizer inspector to protect the farmers against spurious fertilizers.[140]

The completed constitution was submitted to the people for ratification with the approval of eighty-one delegates, only the six Republicans voting against it.[141] The Conservatives had abolished the Board of Education; forbidden state, county, or city aid to corporations; placed limits on state, county, and city taxation; provided for economy and retrenchment in government; abolished the registration oath; re-apportioned representation in the legislature; made radical changes in impeachment trials; written pre-1868 residence requirements for legislative, executive, and judicial officials into the constitution; abolished "unnecessary offices"; limited biennial sessions of the legislature to fifty days; placed prohibitions in the constitution against local and special legislation; moved the state election from November to August; and provided for segregation of the races in the school system. All these changes were presented to the voters as improvements over the 1868 constitution in the campaign for ratification. The Democratic party had not violated its pledges in regard to a property or educational qualification for voting, exemptions, imprisonment for debt, the passage of laws and ordinances, or the submission of the new constitution to the people.

[137] Constitution of 1875, Article XIII, section 22. One delegate objected to this provision because the state had already "borrowed too much from the constitutions of Pennsylvania and Illinois." The vote was 47 to 34 to place a prohibition in the constitution. Montgomery *Alabama State Journal,* October 1, 1875. The new constitution of the state of Illinois did circulate among some of the delegates. See *ibid.,* September 7, 1875.

[138] Mobile *Register,* September 15, October 1, 3, 1875; Montgomery *Alabama State Journal,* October 1, 1875.

[139] See Constitution of 1868, Article XII, sections 1-5.

[140] Going, *op. cit.,* 111. In 1883, the Commissioner of Agriculture was created and charged with this duty, but the Alabama Agricultural and Mechanical College at Auburn conducted the actual analyses.

[141] *Journal of the Convention of 1875,* 165.

A conservative agrarian-minded policy, which showed a distrust of Republican interest in Alabama's railroads, mining, and industrial resources, dominated the work of the convention. Sections against railroad abuses, state, county, and city aid to corporations, retrenchment and economy in government, the decentralization and partial abandonment of the public school system, the abolition of offices (lieutenant-governor, commissioner of industrial resources) and numerous restrictions which provided for a minimum of government, all indicated that Bourbons with an agrarian outlook controlled the convention. Only on the important question of debt adjustment were the agrarians held in check, and in that case because of railroad-minded Governor Houston's plan to by-pass the convention and have the matter adjusted by a debt commission.

The various sections of the new Alabama constitution were "full of the suggestions of the history of the Southern people since the war."[142] Many prohibitions and regulations were written into the constitution because of the experiences of the people of Alabama with the Carpetbaggers. These new sections made the constitution much longer than any previous one and were to hamper the commercial-industrial growth of the state during the last quarter of the nineteenth century. Many matters formerly provided for by legislative enactment were now made parts of the new constitution.[143] Time was to prove them hard to change by the amending process.

But despite all the Bourbons could do, the stamp of the Carpetbagger still remained in the Constitution of 1875. The convention dared not abolish universal manhood suffrage, guarantees of exemptions and women's rights, and popular election of all judicial and executive officers.[144] Although Bourbons curtailed the centralized public school system of 1868, popular approval would not allow further retrenchment. The education article of 1875 was in many ways similar to that of 1868; all sections on education in previous Alabama constitutions dealt exclusively with the philosophy of education rather than its administrative and financial support.

---

[142] Mobile *Register,* October 8, 1875.

[143] The Montgomery *Alabama State Journal,* October 3, 1875, said: "The most distinguished features of the new constitution are its great length and its legislative character."

[144] Of course as already cited, the Bourbons did return the election of solicitors to the General Assembly. And they refrained from denying popular election of superior judges only because of fear that it would defeat the new constitution when submitted.

CHAPTER XIII

RATIFICATION OF THE CONSTITUTION OF 1875

The convention appointed a committee to issue an address to the people in favor of the new constitution. This address, written by Francis Strother Lyon,[1] declared that "The highest aim of the late convention was to insure the safety of the people against the possibilities of extravagance and corruption."[2] It called on the people to ratify the new constitution because it was a "home rule" constitution written by Alabamians; provided for economy in government; prohibited local legislation; forbade state, county, or city aid to corporations; placed a limit on state, county, and city taxes; abolished unnecessary offices including the Board of Education; and made adequate provision for the public schools of the state.[3]

Governor Houston made numerous speeches for the new constitution.[4] Leroy Pope Walker and most of the Democratic delegates made one or more speeches in its favor in their respective counties or districts.[5] The Conservative press carried on a campaign of education on its various articles. John Forsyth's Mobile *Register* was a bulwark of support. The Democrats were bitter in their denunciation of the Constitution of 1868 and the Republicans. They maintained that the Constitution of 1868 was "framed for us by strangers, adventurers and aliens, rejected by the people and forced on us by Congress."[6] The Montgomery *Advertiser* asked: "Who made the present constitution? [And it answered:] Corn field Negroes, corrupt carpetbaggers and United States soldiers. Vote for the new one, made by your own representatives."[7] Democrats appealed for "white supremacy" and warned that the defeat of the constitution would return the "Jacobin Republicans" to power.[8]

The Republican press and most of the Republican leaders opposed the constitution. Ex-Governor William High Smith, Samuel Farrow

---

[1] Mobile *Register*, October 5, 1875.

[2] *Journal of the Convention of 1875*, 169.

[3] *Ibid.*, 169-174.

[4] Montgomery *Alabama State Journal*, November 7, 1875.

[5] Mobile *Register*, October 17, 20, 29, 1875.

[6] Quoted in Montgomery *Alabama State Journal*, October 28, 1875. "Alabama knows what is good for herself better than the Jacobin spawn of aliens and plunderers, who have had her by the throat since 1868. We have a 'home rule' constitution to support," contended the Mobile *Register*, October 9, 1875.

[7] Quoted in Montgomery *Alabama State Journal*, November 13, 1875.

[8] Mobile *Register*, October 7, November 10, 14, 1875.

Rice, and Benjamin Franklin Saffold were actively opposed.[9] However, there was less unity in the Republican party than during the campaign for the convention. Some important Republicans announced in favor of the new constitution. Among these were ex-Governor Lewis Eliphalet Parsons, ex-Governor David Peter Lewis, and Auditor Robert T. Smith.[10] On the other hand the Republican party organization was bitterly opposed and issued numerous circulars and addresses against the constitution.[11] S. F. Rice issued an address to the people in answer to the one issued by the Lyon committee.[12] He appealed to the people to defeat the constitution and have the next legislature submit amendments to the Constitution of 1868. He denounced the exemption, education, impeachment, apportionment, and taxation articles of the new constitution. The exemption provisions were unequal and undemocratic. The education article would destroy the public school system because it "materially reduces the supplies which are fixed by the old constitution, and leaves the educational system dependent for efficiency, upon the mercy, prejudice and disposition of the legislature."[13] The new plan for impeachment was an innovation in government as it denied trial by jury to those impeached. The taxation article which limited state taxes to three-fourths of one per centum would force repudiation of the state debt. The apportionment article disregarded population and apportioned representation in favor of the Democratic party, he charged.

In the campaign the Republicans stigmatized the Democrats as "Bourbons" and "Bourbon Repudiators"; they declared the new constitution was a "Bourbon Democratic Constitution" and reactionary, evidence that "Genuine Bourbons never learn or forget!"[14] The *Alabama State Journal,* a Republican newspaper, exhorted: "To your posts, citizens, regardless of wealth, poverty, race, color or previous condition, and vote against the proposed new infamy! When our friend the *Advertiser* becomes alarmed like its other Bourbon contemporaries, it puts up the howl of nigger! nigger! nigger! nigger!"[15]

The Republicans appealed to the Negroes, the poor, liberal Democrats, and Old Whigs to defeat the constitution. Circulars asked Negro preachers to denounce the constitution from the pulpit.[16] The *Alabama State Journal* carried articles and editorials with the theme that "under the new instrument the rich will become richer and the poor poorer."[17] The *Journal* appealed to the Old Whigs and Democrats as follows:

[9] Montgomery *Alabama State Journal,* October 28, November 3, 12, 1875.
[10] Mobile *Register,* November 10, 1875.
[11] *Ibid.,* November 4, 10, 1875.
[12] Montgomery *Alabama State Journal,* October 28, 1875.
[13] *Ibid.,* October 28, 1875.
[14] *Ibid.,* 6, 7, 11, 12, 13, 1875.
[15] *Ibid.,* November 13, 1875.
[16] Mobile *Register,* November 14, 1875.
[17] Montgomery *Alabama State Journal,* November 10, 16, 1875.

> Democrats not subject to the party lash, will either stay at home or vote against the proposed Alabama constitution. The fearless Old Whigs will be very apt to do the same thing. We devoutly thank God that the people are beginning to think and act for themselves. The people let alone always do right. We have an abiding confidence in the people. Let the people be free to think and act in this matter as they see proper.[18]

Most of the issues in the campaign for ratification were similar to those in the campaign for the convention and in the constitutional convention. But with the new constitution completed, the Republicans charged as never before that the Democrats were destroying the public school system.[19] "The present constitution provides a liberal system of education [contended the *Alabama State Journal*] and the poor man's children have an opportunity of acquiring education free of cost. The proposed constitution virtually drives the children of the poor from the school houses."[20] Republicans compared the $100,000 per annum provided by the new constitution with the "one-fifth of all the annual revenue" section of the Constitution of 1868.[21] They said that the constitution reduced appropriations for schools by at least one-half. The old constitution set aside large sums for schools; the new constitution left the schools "dependent upon the prejudice, whim, or caprice of the legislature."[22] The Democrats replied "that the provisions of the present constitution depend for fulfillment upon the legislature equally with those of the proposed constitution."[23] And the legislature had not in a single year since 1867 given one-fifth of all the annual revenue to schools.[24] Since the Radicals had spent all the money on useless school officials, the provision of the new constitution that not more than four per cent could be spent for administration would actually increase school funds, argued the Conservatives.[25]

The *Alabama State Journal* filled its columns with the adverse criticism of the Northern Republican press. It quoted the Chicago *Tribune* as follows: "The new instrument practically abolishes the public school system. In this, Alabama follows the example of Texas. Both states propose to reduce the mass of the people to something like the literary level of the mule. In both a herd of voting cattle is to be created, and the herd is to be domineered over by a privileged caste of educated men. This is a proposition to go back to the barbarism that prevailed before the war."[26] The Washington *Republican* said: "It virtually destroys the free school system. . . . No State can afford to squelch its school system by positive or even indirect provision in its organic act. The day of immigration for Alabama has passed."[27]

---

[18] *Ibid.*, November 11, 1875.

[19] *Ibid.*, October 22, 27, November 3, 11, 14, 16, 1875; Mobile *Register*, October 31, November 3, 1875.

[20] Montgomery *Alabama State Journal*, November 16, 1875.

[21] *Ibid.*, October 28, November 6, 1875.

[22] *Ibid.*, October 28, 1875.

[23] Mobile *Register*, October 31, 1875.

[24] *Ibid.*, October 26, 31, 1875.

[25] *Ibid.*, October 31, November 3, 1875.

[26] Montgomery *Alabama State Journal*, October 27, 1875.

The Republicans placed much emphasis on the charge that the consitution repudiated the state debt, as the limitations on taxation of the proposed constitution would force repudiation.[28] The *Alabama State Journal* declared:

> The proposed constitution prohibits the levy of a tax sufficient to pay the interest on the public debt. This is repudiation. Yet the State of Alabama has a prior lien on railroad and other property amounting to more than double her public debt. Is it right, is it just, after the capitalists of the country have built our railroads and thereby developed the resources of the State, that they should be robbed of their money? Will the people of Alabama permit this outrage?[29]

The *Journal* further declared: "The new constitution does not directly repudiate the State debt; it simply renders it impossible to pay the interest on the principal of that debt."[30] It attacked the tax limit as follows: "Without doubt, restrictions on the power of the State, county, and city to levy taxes, and limitations of the amount of those taxes, are desirable to all property owners; but to carry the restrictions too far is as great an error as to allow legislators unbounded license. It will embarrass the State and county governments to a great extent."[31] The Northern Republican press vehemently charged that the adoption of the proposed constitution meant repudiation of the state debt.[32] The Democrats denied the charge. They declared that the convention had worked closely with the commissioners to adjust and liquidate the state debt.[33] The commissioners had advised the convention that a tax limit of three-fourths of one per centum would be sufficient to pay the interest on the state debt. They pointed to the fact that the convention voted down an attempt to place a provision in the constitution repudiating the railroad bonds. The placing of a tax limit in the constitution was sound policy, they said. A vote for the new constitution was a vote for low taxes and efficient government.[34] Thomas Hord Herndon asked the people of Mobile to vote for the constitution in order to convince the bondholders that adjustment of the debt was necessary.[35]

During the campaign for the convention, Republicans had said that the Democrats would abolish all constitutional provisions on exemptions. They now attacked the Democrats for leaving the exemption article as in the Constitution of 1868.[36] Exemptions should have been equalized and made more democratic, they said.

---

[27] Quoted in *ibid.*, October 22, 1875.

[28] Montgomery *Alabama State Journal*, November 6, 10, 11, 16, 1875.

[29] *Ibid.*, November 16, 1875.

[30] *Ibid.*, October 31, 1875.

[31] *Ibid.*, November 11, 1875.

[32] *Ibid.*, October 22, 27, 1875.

[33] *Ibid.*, November 13, 1875; Mobile *Register*, October 22, November 4, 1875.

[34] *Ibid.*, November 4, 16, 1875.

[35] *Ibid.*, October 20, 1875.

A new issue in the campaign for ratification was the reform made in the impeachment article.[37] The new constitution provided for the impeachment of state executive officials and members of the Supreme Court by the legislature. Impeachment of chancellors, probate judges, and circuit judges was given to the Supreme Court and no provision was made for a jury. Impeachment of all county officials except the probate judge was to be before the Circuit Courts and trial by jury was provided for. Republicans charged that these provisions denied trial by jury to all those tried by the Supreme Court; one of the most fundamental rights of man had been violated.[38] The issue caused some lawyers and judges to oppose the constitution who might otherwise have supported it.[39]

The Democrats answered the charges of the Republicans but placed most emphasis on the economy in government insured by the constitution.[40] In editorials and speeches they pointed out how much would be saved by its various provisions. "Every friend of retrenchment and reform," said the Mobile *Register,* "will vote for the new constitution."[41] The *Register* added: "The constitution . . . opens to Alabama the door of escape from her present wretched condition. By curtailing the cost of government not less than $160,000 per annum, and by bringing about a reduction of the interest debt not less than $1,333,000 per annum, the credit of the State can be saved, and the rate of taxation diminished."[42] State Auditor Robert T. Smith said the proposed constitution would save $264,550 per annum.[43] He issued a detailed list of the savings made by each provision. He thought "the proposed constitution a decided improvement over the one now in force. It secures economy and retrenchment in the administration of the State Government—prohibits special legislation, endorsement or loan of the State's credit for private enterprise, and guarantees the same rights and privileges to all classes and conditions of its citizens."[44]

On the day of the election the Mobile *Register* exhorted the people to vote for the proposed constitution for the following reasons:

---

[36] Montgomery *Alabama State Journal,* October 28, November 6, 7, 1875.

[37] *Ibid.,* October 28, November 13, 14, 16, 1875.

[38] *Ibid.*

[39] *Ibid.,* November 3, 11, 1875. The Montgomery *Alabama State Journal* of November 16, 1875, ran many short editorials like the following: "A vote for the proposed constitution is to invite repudiation, to rob the poor man's child of an ducation, and take the power of impeachment from the people and put it in the hands of the three judges of the supreme court."

[40] Mobile *Register,* October 22, 23, November 4, 16, 1875.

[41] *Ibid.,* November 10, 1875.

[42] *Ibid.,* October 22, 1875.

[43] Letter of Smith's printed in *Alabama State Journal,* October 22, 1875.

[44] *Ibid.*

> The new constitution abolishes an odious test oath. It confirms the safety of exempted property. It provides as liberal a fund for the public schools as has ever been provided in the history of this or any other state. It guards the sacred writ of habeas corpus against suspension under any circumstances. It enables corporations to be formed for manufacturing, mining and other industrial objects. It forbids the giving or lending of the state, county or city revenues for speculative purposes. It diminishes state expenses at least one quarter of a million. It gives representation to five counties which have now no voice in the General Assembly. In every respect it is infinitely superior to the existing constitution.[45]

On November 16, 1875, the people ratified the proposed constitution by a vote of 85,662 to 29,217.[46] Only the four Black Belt counties of Autauga, Dallas, Lowndes, and Montgomery voted against it.[47] The people had voted for the convention by a majority of 17,835; the constitution received a majority of 56,445. The Democratic party was more entrenched in power than at any time since the Civil War.

---

[45] Mobile *Register,* November 16, 1875.

[46] *Ibid.,* December 3, 1875. This is the official count of the vote released by the secretary of state.

[47] *Ibid.*

CHAPTER XIV

THE BACKGROUND FOR SUFFRAGE REVISION, 1875-1901

In 1875, the Bourbons dared not even contemplate a revision of the universal manhood suffrage provisions of the 1868 Constitution because of the fear of federal intervention. The Fifteenth Amendment had been recently ratified and ways and means of circumvention were yet to be worked out. Alabama had been redeemed only the previous year and federal troops were still in the South. In an effort to secure a convention in 1875, Bourbons promised not to place any property or educational qualification on the right to vote,[1] which pledge they wrote into the declaration of rights of the 1875 Constitution.[2] Because of these circumstances, the suffrage was not an issue in the Bourbon convention.[3]

After writing the Constitution of 1875, the primary problem of the Democrats was continued control of the state by whatever devices they might command. Their problem was made easier by the decline of the Republican party in the state and the refusal of national administrations to interfere in state affairs after 1877. For a few years after the Democratic victory in 1874, the Bourbons had to depend on the "white" counties of Alabama for continued support, because the Black Belt counties were still under Republican-Negro control. However, as soon as the Bourbons got control of the Black Belt, it became the stronghold of conservatism in the state and Black Belt leaders came to accept Negro suffrage as a positive good, especially during the "independent" movements of the late eighteen-seventies and eighties. With a weak Republican party, Democrats could manipulate the Negro vote in order to "outvote" the "white" counties of Alabama. "The enfranchisement of the colored race [declared a Black Belt newspaper] whatever may have been the motives of the dominant party when accomplishing it, has resulted well for all our people."[4] North Alabama newspapers and leaders came to condemn the Black Belt Democrats for their use of the Negro vote, even as the Conservatives had earlier denounced the Radicals for the same reason.[5] Ballot box stuffing by the Democrats had begun in the Black Belt in order to assure "white supremacy";[6] Bourbons carried it on with that tradition, but the real motive became continued conservative control of the state.[7]

---

[1] *Acts of Alabama* (1874-1875,) 112.

[2] The Constitution of 1875, Article I, section 38, reads: "No educational or property qualification for suffrage or office, nor any restraint upon the same, on account of race, color, or previous condition of servitude, shall be made by law."

[3] In 1875, delegate William C. Oates in reference to the suffrage declared, "it is the best that can be ratified under the circumstances that now surround us." Mobile *Register,* October 7, 1875. Later, delegate George Paul Harrison declared, "it was the best we could do under the circumstances, with federal bayonets glittering about our capitol and the Negro then with his heel on the neck of the white man." Montgomery *Advertiser,* April 26, 1899.

[4] Montgomery *Advertiser,* April 6, 1879, quoted in Going, *op. cit.,* 33. In other Southern states, Wade Hampton and L. Q. C. Lamar forcefully defended Negro suffrage. Gunnar Myrdal, *An American Dilemma,* II, 1312.

The key to control of the Negro vote was always to be found on the local government level where sheriffs, probate judges, and other officers were made responsible for elections. In 1874, the Democrats won control of most county governments in the state. However, in some Black Belt counties where Republicans still remained, the legislature forced Republicans from office by placing their bonds so high that no local Republican could meet it. The governor then appointed a Democrat to the vacant elective office.[8] Fraud in elections often resulted from the lack of representation of all parties at the polls. Although the election laws generally provided that both parties have inspectors at the polls, local Democratic authorities often appointed an incompetent Negro inspector for the opposition.[9]

Force, intimidation, and violence had been used during Reconstruction days to dominate the Negro by both Radicals and Conservatives.[10]

[5] Birmingham *Alabama True Issue,* August 21, 1880; Huntsville *Advocate,* December 8, 1880; Tuscaloosa *American,* July 21, 1898; John W. DuBose, "Some Very Discontented Electors," Birmingham *Age-Herald,* June 27, 1914.

[6] John Barnett Knox, "Speech before Democratic State Convention," Mobile *Register,* April 26, 1900.

[7] In the Cobb-Goodwyn election of 1894 in the Fifth Alabama district, the six white counties gave Populist candidate A. T. Goodwyn a majority of 3,612, while the three Black Belt counties returned majorities so large for Democrat James E. Cobb as to give him a majority of 508 in the district. *House of Representatives Report,* No. 1122, 54 Cong. 1 Sess. In many other cases during the Populist revolt in the nineties, the Black Belt counties attempted to "count in" the Democrat and "count out" the opposition. In 1894, a congressional committee reduced the predominantly Negro vote of the Democratic candidate in Dallas County from 5,462 to 568 and seated his opponent. *House of Representatives Report,* No. 572, 54 Cong., 1 Sess. "During the twenty years of election frauds in Alabama, the Black Belt counties have controlled the offices and public affairs of Alabama, and when a Black Belt leader has moved to other sections of the state, he has been promoted and elected to office and given control of public affairs," declared a petition to Congress from North Alabama in 1895. *Senate Miscellaneous Documents,* No. 67, 53 Cong., 3 Sess., 12.

[8] Going, *op. cit.,* 33. For a good discussion from the Republican point of view of unfair and dishonest methods used by Democrats to insure their continued control of the state after 1874, see Elections in Alabama, 1874-1877, *Senate Report,* No. 704, 44 Cong., 2 Sess., 1-706.

[9] In the nineties, however, the law gave a board composed of the probate judge, sheriff, and clerk of court, discretionary power so that they were to appoint an inspector for the opposition only "if practicable." *Alabama Code of 1896,* Section 1588. In one instance at least, inspectors requested were not appointed for the opposition in eleven out of the thirty-one precincts in Dallas County. *House of Representatives Report,* No. 327, 56 Cong., 1 Sess.

[10] According to the Mobile *Register,* January 1, 1892, the first resort of the Conservatives to the same "loose" election methods of the Republicans was in the

The Ku Klux Klan and other hooded orders helped to overthrow the Radical regime. However, during the late seventies and eighties methods used to control the Negro vote became more ingenious. Theft, exchange of ballot boxes, removal of polls to unknown places, false certification, illegal arrests on the day of election, importation of voters, purloining of ballots, the use of fictitious names, and the systems of "counting out" and "counting in" were all used. When none of these methods proved successful the Negro was paid for his vote.[11]

Between 1875 and 1900 there were many contested election cases from Alabama before the United States House of Representatives.[12] Ten such cases arose before 1891, most of which originated from efforts of Republicans to unseat Democrats from the Fourth District, composed of Black Belt counties.[13] However, during the Populist revolt these contests increased and arose in most of Alabama's congressional districts as Republicans, Populists, or Jeffersonian Democrats challenged regular Democrats. The opposition unseated three Democrats after the 1894 election and one after 1896; in four contested cases in the nineties Democrats retained their seats.[14]

The testimony taken under oath and published in these contested election cases is perhaps the best source of fraudulent election methods prevalent in the state during the period. There were innumerable cases cited of "counting out" votes or greatly falsifying returns. Officials refused to count thousands of votes of the opposition because they failed to meet the exact specifications of complicated election laws or because of other "pretexts." In addition, the following devices or practices were

---

Mobile election for mayor in 1872. The *Register* claimed that 20,000 votes were cast in that election in a voting population of less than 8,000.

[11] Chester H. Rowell (ed.), *A . . . Digest of all the Contested Election Cases in the House of Representatives of the United States, 1789-1901,* 711-718; John Tyler Morgan, "Negro Suffrage in the South," *Congressional Record,* XXXIII (January 8, 1900), 671-675; Charles S. Johnson, *The Negro in American Civilization,* 337-339.

[12] Rowell, *op. cit.,* 11-12.

[13] Going, *op. cit.,* 38.

[14] In 1892, W. W. Whatley, Populist, unsuccessfully contested the seat of James Edward Cobb, Democrat of the Fifth Alabama district. After the congressional election of 1894, four of Alabama's nine seats were contested. A congressional committee reduced the vote of Democratic candidate Gaston A. Robbins in Dallas County from 5,452 to 568 and seated William F. Aldrich. The committee found that if the 2,021 votes were correct from the one Selma precinct, they would have had to have been received at the rate of four a minute, all by one set of election inspectors. Judge W. C. Robinson unsuccessfully contested the seat of George P. Harrison from the third district. James Edward Cobb, anti-Cleveland Democrat lost his seat from the fifth district on contest of Albert Taylor Goodwyn, Jeffersonian Democrat. In the ninth district Oscar W. Underwood lost as a result of a contest by Truman H. Aldrich, Republican. On the basis of fraud in the elections four of Alabama's congressional seats were contested again after the 1896 election and one after 1898. In 1896, a congressional committee unseated Democrat T. S. Plowman (reducing his vote in Dallas County from 4,289 to 612) and seated W. F. Aldrich. Rowell, *op. cit.,* 483, 502-505, 554-557, 597; *House of Representatives Report,* No. 572, 54 Cong., 1 Sess.; No. 284, 55 Cong., 2 Sess.; J. W. DuBose, "Article Number 124," Birmingham *Age-Herald,* June 29, 1914.

used according to investigating committees: calling off the names wrongly; voting persons who did not live in the precinct; the passing out of purloined ballots to those who would vote the "right" way;[15] refusing to hold an election in precincts where the opposition vote was heavy because of a case of smallpox; the voting of "dead persons, persons outside the county, and fictitious persons"; purchasing of Negro votes; getting the Populist inspector drunk while Democrats counted the ballots; intimidating voters by organizing disorderly demonstrations; and disorderly conduct on part of inspectors consisting of "drinking" and "shooting."[16] Occasionally, a Democratic witness before a congressional committee would make like charges against the Jeffersonian Democrats or Populists.

In 1894, even Senator Morgan's seat in the United States Senate was contested on the ground that the legislature which elected Morgan had itself been fraudulently elected. A committee of the Senate condemned the Alabama legislature of 1894, but the Senate failed to unseat Morgan.[17]

Several of these contested elections warrant detailed study because they furnish typical case histories of fraud in particular elections. In Jefferson County, in the Aldrich-Underwood election of 1894 deputy sheriffs arrested and intimidated colored voters on frivolous and unfounded pretenses.[18] Populists violated the Alabama election law by printing exact copies of the official ballots to be used as dummies to teach their illiterate voters where the Populist names were on the ticket. Colored voters were annoyed by challenges and every colored voter had to be identified by a white man. In beat number nine, which usually voted Republican, there was no election. The excuse given by the inspectors was that "the day was cold and we had no fire." In Bessemer all except 126 of the 2,400 official ballots were stolen from the court house the night before the election and burned. The ballots gave out next day when a long line of Republicans and Populists came to vote. The inspectors told the people they "might as well go on home ."[19] As a result, the editor of the Bessemer *Weekly* declared:

---

[15] The Mobile *Register,* January 3, 1900, explained the practice as follows: "The worker at the polls being supplied with a number of ballots, marks them to suit the side for which he is working; and passes them to the voters, who exchange their unmarked ballots for ones that have been marked by the worker. In this way the difficulties of the Australian ballot law are avoided and many men who cannot prepare their own ballots are enabled to vote the marked tickets, while the worker gets possession of the voter's unmarked tickets, and can use them and get them passed into the ballot box. Thus is established an endless circle, and even a dozen blank ballots that are outside the control of election officers may be used to effect in a radical manner the results of the election." See John C. Wickliffe, "Negro Suffrage a Failure. Shall We Abolish It?" *Forum,* XIV (February, 1893), 797-804 for a discussion of other illegal methods of ballot control used in the period.

[16] The committee on the congressional election in the Fourth Alabama district in 1896 paid its respects to the ingenuity of a Dallas County election inspector as follows: "The versatility of an election inspector in Dallas County is past finding out and hard to keep up with. He seems to have been ready for the emergency in whatever form it appeared." *House of Representatives Report,* No. 284, 55 Cong., 2 Sess.

[17] Morgan's seat was contested by Warren Stone Reese, who sold his plantation in order to get money to prosecute the contest. *Senate Miscellaneous Document,* No. 67, 53 Cong., 3 Sess.; John W. DuBose, "Article Number 124," *Age-Herald,* June 29, 1914.

[18] *House of Representatives Report,* No. 2066, 53 Cong., 2 Sess. This contest was between Truman Heminway Aldrich, wealthy Republican-Populist mining engineer and Oscar W. Underwood, who had received the certificate of election. Underwood was unseated two days before the end of the first session of Congress Aldrich served from June 9, 1896, to March 3, 1897. Owen, *op. cit.,* III, 16.

> Far better it would have been that Aldrich should have had a six hundred majority in Bessemer, in a free, honest and untrammeled ballot than that the exercise of the right of suffrage and citizenship should be tainted with fraud, dishonesty and crime. . . . The time has gone for the perpetration of such unblushing, barefaced outrages. The time has passed for the forcible disfranchisement of any citizen. The handwriting is on the wall and those who have been feasting in this foul nest of political crime can not well mistake it.[20]

In the Underwood-Crowe election of 1896[21] in the ninth Alabama district, the House of Representatives committee found that conspiracy, fraud, intimidation, ballot box stuffing, counting legal votes cast for contestant for contestee, counting votes cast for contestee that never were cast for anyone, marking the ballots of qualified illiterate electors for the contestee when the fixer was directed by said elector to mark ballots for contestant, the bribery of electors and officers of election, obstruction of voters at the polls, and the changing of precinct returns in the counties of Hale and Perry were all used in order to defeat Crowe and give the election to Underwood. The registrars in Hale, Jefferson, and Perry were Organized Democrats and avoided the registration of voters known to be opposed to Organized Democracy. In these same counties illegal registration was allowed, and the sheriffs, clerks of circuit courts, and judges of probate, all Organized Democrats, declined to appoint election inspectors for the contestant.[22]

Legal methods used between 1875 and 1901 to nullify or restrict the Negro vote may be classified under the following principal divisions: (1) gerrymandering, (2) increasing the appointive power of the governor, (3) great complexity in the election laws.[23] Soon after Alabama was redeemed from Radical rule the state was redistricted.[24] All the Black Belt counties possible were placed in one congressional district, the "Old Fourth Alabama." The Democratic party had not yet regained control of the Black Belt, and preferred to lose one district rather than run the risk of a Republican triumph by a much smaller majority in several districts.[25] However, during the Populist revolt, when it became possible to roll up heavier majorities for the Democratic party in the Black Belt than in any other portion of the state, the legislature in redistricting the state put one or more Black Belt counties in seven of the nine congressional districts.[26] The congressional districts then looked like "shoe strings" running north and south, and the Negro vote in each one was counted on to help carry it for the Democratic party.[27]

---

[19] *House of Representatives Report,* No. 2006, 54 Cong., 1 Sess.

[20] Quoted in *ibid.*

[21] *House of Representatives Report,* No. 597, 55 Cong., 2 Sess. G. B. Crowe attempted to unseat Oscar W. Underwood, but Underwood retained his seat.

[22] *Ibid.* The ticket voted at this election contained fifty-seven names arranged in alphabetical order, with no device or other means of determining the politics of any candidate.

[23] Complex election laws served indirectly as an educational test, which could not be directely provided for because forbidden by the Constitution.

Where the Republicans could not be driven from office by other means, the legislature abolished the elective court of county commissioners or city councils and substituted therefor local bodies appointed by the governor.[28] Nine such instances may be cited in the Black Belt in the 1870's.[29] Because the Negro was still in control, the legislature of 1875-1876 abolished the court of county commissioners in Dallas County and created a court of revenue with equal powers appointed by the governor.[30] The legislature of 1876-1877 replaced the courts of county commissioners for Montgomery and Wilcox counties with courts of revenue made appointive by the governor.[31]

---

[24] *Acts of Alabama* (1874-1875), 115.

[25] "Politics and the Race Question in Alabama," *The Nation,* LIX (September, 1894), 211; Samuel Denny Smith, *The Negro in Congress, 1870-1901,* 82.

[26] *Acts of Alabama* (1890-1891), 627. "Like many other Congressional districts in the Southern States, the Fourth Alabama District was "gerrymandered" so as to include one or two Black Belt counties, where the Democrats could practice their frauds with little or no interference." William H. Skaggs, *The Southern Oligarchy,* 123.

[27] For instance, Baldwin County on the Gulf of Mexico was placed in the same congressional district with Montgomery County in the central portion of the state. See *Congressional Record,* 53 Cong., 3 Sess., 2071-2078 for a discussion of the gerrymandering of Congressional districts by the Alabama legislature in 1891 and an excellent map showing the results.

[28] This ran counter to a very strong antebellum tradition in Alabama where county government had been very democratic, but democracy was now sacrificed to "white supremacy."

[29] *Acts of Alabama* (1874-1875), 215, 220, 513; *ibid.* (1875-1876), 379, 381, 387; *ibid.* (1876-1877), 156; *ibid.* (1877-1878), 114.

[30] *Ibid.* (1875-1876), 381, 385.

[31] *Ibid.* (1876-1877), 156-163. James Jefferson Robinson, a member of the legislature, explained that body's action as follows: "Montgomery county came before us and asked us to give them protection of life, liberty and property by abolishing the offices that the electors in that county had elected. Dallas asked us to strike down the officials they had elected in that county, one of them a Negro that had the right to try a white man for his life, liberty and property. Mr. Chairman, that was a grave question to the Democrats who had always believed in the right of the people to select their own officers, but when we saw the life, liberty and property of the Caucasians were at stake, we struck down in Dallas county the Negro and his cohorts. We put men of the Caucasian race there to try them. . . .

Furthermore, the Democrats attempted to control the Negro vote by the passage of election laws designed to disfranchise the Negro. These laws continued many of the centralized and arbitrary practices of the Radicals and added many new devices, including long residence requirements in the voting precinct, public challenging of voters at the polls, and the use of ballots so designed that fraud in elections could not be proven.[32] Moreover, many Negroes were disfranchised by Article VIII, Section 3, of the constitution, which had previously denied the ballot to those guilty of "grand larceny," but was now interpreted to disfranchise those guilty of "petit larceny."[33] The legislature considered but never passed bills providing for educational, property, or poll tax qualifications for voting, largely because it was evident that provision for these qualifications could be legally accomplished only through the amending process.[34] Efforts to amend the constitution so as to regulate suffrage and elections proved ineffectual.[35]

In 1893, during the Populist revolt, the legislature passed the complicated Sayre election law.[36] According to this law, voters were to be registered only in May, and within the precinct where the vote was to be cast. The governor was required to appoint a registrar in each precinct. For the first time in the state's history, a common ticket for all candidates, printed by the state or county and not by the candidates themselves was required. Candidates had to be arranged alphabetically without distinction of party under the office for which they were running. A voter was required to show his certificate of registration; enter an isolated booth where he would receive a ballot and remain for five minutes only; if illiterate he could be aided only by an election official. Heavy fines and imprisonment were imposed for violators of the law, especially for one using imitation ballots.

The Sayre law was framed by the Democrats who had promised a more select electorate in the platform of 1892 and was motivated largely by the charges of fraud in the Kolb-Jones election of 1892.[37] The original bill provided for the payment of a poll tax during the preceding year as a condition of registration.[38] Mississippi had made such a require-

---

In Montgomery county we struck down the Commissioners Court because they would not protect the rights of property in that county." Montgomery *Advertiser,* April 23, 1899.

[32] Going, *op. cit.,* 34-35.

[33] Constitution of 1875, Article VIII, section 3; *Anderson vs. State* 72 Alabama 187 (1882); *Washington vs. State* 75 Alabama 582 (1884).

[34] The Constitution of 1875, Article I, section 38, forbade any educational or property qualifications. Montgomery *Advertiser,* February 20, 1887; Mobile *Register,* November 22, 1888.

[35] *Senate Journal* (1892-1893), 433; *House Journal* (1898-1899), 209.

[36] *Acts of Alabama* (1892-1893), 837.

[37] Montgomery *Advertiser,* June 9, 1892, September 25, 1901.

[38] Mobile *Register,* January 20, 1893.

ment part of her Constitution of 1890. The Alabama Constitution of 1875 had provided that the "General Assembly may levy a poll tax not to exceed one dollar and fifty cents on each poll,"[39] but had not made payment a prerequisite to registration and voting. Moreover, the poll tax for voting was of doubtful constitutionality since the Constitution of 1875 forbade any educational or property qualification for voting.[40] For this reason and "because of the views of the factions opposed to Organized Democracy" the poll tax receipt as a prerequisite for voting was striken out in the committee.[41] Actually, the large number of Populists or Jeffersonian Democrats in the legislature in 1893 forced the concession as many poor whites as well as Negroes would have been disfranchised by such a provision.

Even after the deletion of the poll tax, Albert Taylor Goodwyn, the leader of the Jeffersonian Democrats in the Senate characterized the bill as "the most iniquitous measure that ever came through the portals of the Senate chamber."[42] It would disfranchise thirty thousand white voters, he declared, and would lead to turmoil and bloodshed in the election of 1894. The opposition did not oppose the disfranchisement of the Negro who was being used to "outvote" the "white" counties, but feared the law would disfranchise many of their illiterate white voters. Democrats claimed that the law would not disfranchise whites and would eliminate fraud and corruption in the election system. They pointed out that the registration of voters, the blanket ballot, and secrecy in voting, all of which were a part of the Sayre law, were essential features of the Australian ballot system.[43]

The Sayre law, as the conservatives intended, disfranchised many illiterate white as well as Negro voters and enabled the Democrats to remain in power despite the Populist revolt.[44] The registration certificate requirement and complicated procedures of the law either denied the ballot to these classes or allowed the Democratic election officials to vote them the "right way."[45]

---

[39] Article X, Section 1.

[40] Article I, Section 38; *Senate Journal* (1896-1897), 75.

[41] Mobile *Register,* January 28, 1893.

[42] *Ibid.,* February 20, 22, 1893. Reuben F. Kolb and other Alabama Populists preferred to call themselves Jeffersonian Democrats in state elections because it enabled them to secure a larger part of the Democratic vote. John B. Clark, *Populism in Alabama,* 139.

[43] Mobile *Register,* March 2, 1893. According to the Birmingham *Age-Herald* the first use of the Australian ballot in Alabama was in the primary election of 1891 in Jefferson County. Quoted in Mobile *Register,* March 2, 1893.

[44] Skaggs, *op. cit.,* 130; Mobile *Register,* March 2, 4, 1893; D. W. McIver, "Judge A. D. Sayre," Montgomery *Advertiser,* December 13, 1903. This objective is well stated by documentary evidence from Alabama and by excerpts from news papers in Alabama quoted in *Senate Miscellaneous Documents,* No. 67, 53 Cong., 3 Sess. The Selma *Times* declared the Sayre law placed "authority in the hands of those best qualified to serve the people and promote their interests."

[45] Mobile *Register,* March 1, 2, 4, 1893; April 23, 1901. In some localities an

> If the election laws of Alabama [declared a congressional committee] had been designed to encourage fraud and thwart the people's will, they could not in some respects have been more happily framed to meet that purpose. The form of ticket is such that an intelligent voter must have difficulty and the illiterate voter must be absolutely at the mercy of the ticket marker. He receives the ballot from the inspector, it has no distinguishing mark or emblem; he can not have a sample ticket from which to learn the location of the names of the candidates of his choice; he can not have his ticket marked in the open; he must retire to a booth where no eye but the markers can see him; and in that seclusion, with no means of knowing whether his will is expressed by the mark placed on his ballot, a dishonest marker can make the honest voter the tool of his own nefarious purpose.[46]

Governor William Calvin Oates told the legislature in 1896: "There are ten times a greater number of failures to comply with its complicated provisions than was ever known before in the history of the state, which renders necessary a large number of appointments by the governor."[47] In a speech in Mobile, Russell McWhorton Cunningham, president of the State Senate, declared that he had voted against repeal of the Sayre election law one time and would do so again, "because it is the best and cheapest method of swindling the white people have ever devised for the maintenance of white supremacy."[48]

Many leaders of Organized Democracy in Alabama declared that Democrats were justified in stealing votes in order to save the state from "negro domination." The *Age-Herald* declared that the very best men, among whom were ministers of the gospel, stole votes to maintain "white supremacy."[49] Although the issue had been a serious one for the whites in Alabama in the mid-seventies, there was little danger of

---

illiterate voter was asked by the election officials to express his party preference only; in others he was required to name every person on the ballot for whom he wished to vote. Stephen B. Weeks, "History of Negro Suffrage in the South," *Political Science Quarterly,* IX (December, 1894), 696.

[46] *House of Representatives Report,* No. 284, 55 Cong., 2 Sess. Many illiterate Negroes were too indifferent to register and too suspicious to go into the closed booths to mark their ballots. Mobile *Register,* March 2, 1893.

[47] *Senate Journal* (1896-1897), 43.

[48] Cunningham said that under the Sayre law "the blind and the ignorant are practically disfranchised. . . . When they want to go to vote now, and are unable to fix their own tickets they have to go to the fixer, and this is practical disfranchisement, for we have learned that the cheapest way is to fix the fixer instead of the voter." Mobile *Register,* April 23, 1901. Under previous Alabama election laws the voter might receive the aid of friends to mark his ballot. *Ibid.,* March 4, 1893.

[49] Birmingham *Age-Herald,* October 6, 1901. The Selma *Times,* December 6, 1895, declared: *"The Times is one of those papers that does not believe it is any harm to rob or appropriate the vote of an illiterate Negro.* We do not believe they ought ever to have had the privilege of voting. This right was given or forced upon them and the white people by the bayonet, and the first law of nature, self preservation, gives us the right to do anything to keep our race and civilization from being wiped off the face of the earth."

Negro domination in Alabama after 1880. However, the Bourbons continued to use the issue in order to justify the illegal and fraudulent election methods prevalent in the state, by which they maintained the status quo and prevented social and economic reform.

In 1894, after Oates had defeated Kolb (in this election as in 1892 there was evidence of gross fraud) he found it necessary to argue at length that he had been elected governor of Alabama. He denied that he had been fraudulently elected. As for ballot box stuffing during Reconstruction, white supremacy "had to be accomplished to save the people from the awful gulf of despair which yawned before them, and the recording angel will shed no tear in blotting those acts from the record of the final account." If there had been some irregularities in his behalf in the Black Belt, it was because the white people there feared the return of "flagrant wrongs and humiliations similar to those they endured from 1867 to 1875," he said.[50] John Tyler Morgan, United States Senator from Alabama (1877-1907), also defended the prevailing suffrage practices, which favored the Bourbons. In a letter to John Hollis Bankhead, Senator Morgan wrote: "I have always deplored the existence of a condition in the South that seemed to make the control of the ballot by force and fraud a necessary measure. But, I count Negro domination of the white people at the ballot box as an outrage that our people should not be compelled to submit to, and I have not censored any man for resorting to any means to prevent this wrong."[51]

Dishonesty could not be confined to the suffrage alone. It carried over into every form of society. The whole social, economic, and political life of the state was affected. The jury system, the legislature, and the entire governmental machine felt its harmful influence.[52] The Speaker of the State House of Representatives told a Mobile audience that Negro suffrage had forced the whites "to crimes of larceny and perjury and had corrupted the jury, the judge, the solicitor, and others."[53] Naturally a legislature elected by dishonest suffrage methods did not refrain from using similar tactics if the occasion arose.[54] "It is," said the Montgomery *Advertiser,* "a matter of common gossip in

---

[50] Oates' Inaugural Address, Montgomery *Advertiser,* December 2, 1894.

[51] Mobile *Register,* February 28, 1900.

[52] *Ibid.,* January 20, 1900; Birmingham *Age-Herald,* April 2, 1901. Booker T. Washington wrote: "I am convinced that the most harmful effect of the practice to which the people in certain sections of the South have felt themselves compelled to resort, in order to get rid of the force of the Negroes' ballot, is not wholly in the wrong done to the Negro, but in permanent injury to the morals of the white man." Booker T. Washington, *Up From Slavery,* 165-166.

[53] Mobile *Register,* January 20, 1900.

[54] See State Representative John T. Shugart's testimony before the House Committee for a weird tale of bills that were stolen before the clerk could enroll them, and of the attempt of some members of the legislature to recover them by force. *House of Representatives Report,* No. 597, 55 Cong., 2 Sess.; Montgomery *Advertiser,* March 18, 1899.

Montgomery that all sorts of constitutional irregularities were winked at by officers of the Assembly every day."[55] The editor further declared:

> There is little doubt that scores of bills, particularly local ones were passed without being voted upon at a complete roll call and without a quorum being present. The laxness in these matters has been a growing evil for a long time, and it has reached fearful proportions in the last two or three assemblies. It is very likely that a large majority of the local bills on the statute books during the last few years were not passed constitutionally. . . . Ballot box corruption did it.[56]

"After all, [declared the *Age-Herald*] legislative rottenness springs from ballot box corruption, and until the latter is eliminated the former can not be. The constitutional convention will tackle the latter and this will result in the downfall of the former."[57]

The Negro suffrage issue became most acute after the Democratic, or "white man's," party divided. Although there were dissident movements in the 1880's, the appeal to "white supremacy" served to hold the Democratic party intact.[58] However, after 1890 economic dissatisfaction which had long been suppressed came to the surface. The Populists or Jeffersonian Democrats arose to challenge the supremacy of the Bourbon Democratic party.[59] In many respects the revolt within the Democratic party was essentially a reassertion of economic differences and social animosities of earlier Alabama history. The whites of Alabama had submerged their differences since the war because of the danger of "Negro domination," but the depressing state of economic affairs during the nineties forced a separation. The gubernatorial election of 1892 indicated that the voters of the state were almost evenly divided.[60] With one white party the Negro might be voted the "right way" or kept from voting by extra-legal methods. With two white parties the Negro vote was again at a premium and conservatives claimed "white supremacy" was threatened. In a close election the party that

[55] Montgomery *Advertiser,* March 31, 1901.

[56] *Ibid.* Mitchell B. Houghton, president of the Alabama Commercial and Industrial Association declared "that it has been left to the late lamented General Assembly to develop the fact that it is necessary to guard bills which have passed both houses against thieves who steal them bodily or who insert provisions not in the bills as passed." Birmingham *Age-Herald,* March 7, 1901.

[57] Birmingham *Age-Herald,* April 2, 1901. The Supreme Court of the state declared the revenue bill of the session of 1898-1899 unconstitutional because "amendments were not adopted as the constitution required, and therefore the whole law is void and of no effect." Mobile *Register,* May 30, 1900.

[58] Going, *op. cit.,* 52-60. In 1878 and 1880, the Greenback party elected William Manning Lowe to Congress from the eighth Alabama district. See Frances Roberts, "William Manning Lowe and the Greenback party in Alabama," *The Alabama Review,* V (April, 1952), 100-121.

[59] John Bunyan Clark, *Populism in Alabama,* 86; Moore, *op. cit.,* 603.

[60] Clark, *op. cit.,* 136. Thomas G. Jones' majority over Reuben F. Kolb was only 11,435 out of a total vote of 242,483.

could buy or "count in or out" the most Negro votes as the case might be would win the election. All parties were guilty of illegal voting practices, but since the Negro population was concentrated in the predominantly Bourbon Democratic sections of the state the Democrats had the greatest opportunity and made the most of it.[61] Ironically, the Democratic party, which claimed to be "the white man's party of Alabama," remained in power by using the bulk of the Negro votes.

In 1890, Reuben F. Kolb, the "Alliance" candidate for governor was defeated in the Democratic State Convention by a combination of conservatives.[62] They nominated Thomas Goode Jones, "the very apotheosis of the suave temperament and philosophy of the Conservative wing of the party."[63] After his defeat in the Convention of 1890 Kolb accepted Jones' victory gracefully and supported Jones. But in 1892 Kolb sought the nomination and the campaign again became a struggle between "Radicals and Bourbons" for control of the Democratic party machinery. Kolb lost in the convention a second time and now bolted the party and ran against Jones as a Jeffersonian Democrat or Populist. In addition to advocating an agrarian program, Alabama Populists made bitter complaints against the convention method of nomination, the political boss, and Bourbon conservatism. The movement was a sectional fight of "white" counties against "Black Belt," the "white" counties claiming that they had rescued the Black Belt from Negro domination in 1874, and that ever since the Negro had been used to "outvote" them and "out apportion" them in the legislature and state convention.[63a] Machine domination, they declared, made it impossible to nominate any candidate with a progressive program.[64] The electorate reached a high pitch of excitement during the campaign of 1892. In the August election, Jones defeated Kolb by a majority of 11,435 in a vote of nearly a quarter of a million. Kolb carried eight more counties than Jones, and the Birmingham *News* conceded that Kolb received a larger white vote than did Jones.[65] One historian has declared that the vote "was notoriously fraudulent and there can be little doubt that Kolb was counted out in the Black Belt."[66] The Kolb-Oates election of 1894 was in many ways a repeat performance of 1892. The complete official returns gave William C. Oates a majority of approximately 27,000. There were bitter charges and countercharges of manipulation of the ballot box.[67] No legal appeal could be made to the legislature for an investigation, since no law existed on the subject. However, Kolb decided to take the oath of office and deliver an "inaugural address." When denied the capitol steps, he spoke from a wagon on Bainbridge Street. He declared that he took the governor's oath "simply to emphasize our feelings against these frauds and usurpations and I promise you to use all legal means at my command to set aside the fraudulent election returns by which Colonel Oates claims the office of governor."[68]

---

[61] Moore, *op. cit.*, 624; Skaggs, *op. cit.*, 122-126. Skaggs cites numerous cases where the opposition to Organized Democracy had watchers at the polls in the Black Belt in the elections of 1892 and 1894, who counted every voter that went to the polls during the day, and yet the returns in favor of the Democratic candidate exceeded the persons voting by thousands of votes.

[62] For thirty-three ballots Kolb held a wide lead, but in caucus before the thirty-fourth ballot all other candidates decided to support Thomas Goode Jones who was nominated by a vote of 269 to 256.

[63] Moore, *op. cit.*, 614.

[63a] "In the Democratic State Convention the basis of representation is so arranged as to give control to the leaders of the Black Belt democracy . . . through the force of Negro majorities, which are denied . . . representation therin." *Senate Miscellaneous Document*, No. 67, 53 Cong., 3 Sess., 13. The rule which allowed each county one delegate in the Democratic Convention for every 300 votes (white or black) cast for the Democratic party in the last election, enabled the Black Belt to maintain its dominance in the party during the Populist revolt.

[64] Moore, *op. cit.*, 620-623, 628-630; Clark, *op. cit.*, 140-141; Charles G. Summersell, A Life of Reuben F. Kolb, 32, 56 (unpublished Master's Thesis, University of Alabama, 1930).

Although agitation to disfranchise the Negro in Alabama had arisen about 1890 (the year of the Mississippi Convention), it was the Populist revolt of the eighteen-nineties that furnished the most persuasive evidence of the need for suffrage revision. The people of the "white" counties became convinced that the Negro would always be used to "count out" the opposition and should be disfranchised, but feared Negro disfranchisement lest the ballot also be taken from the illiterate whites. And discerning Black Belt leaders realized that the limit had been reached in fraudulent election methods—that representative government itself was threatened. As they watched the Populist revolt, many conservatives also determined that the suffrage should be given only to those

[65] Birmingham *News,* August 9, 18, 1892.

[66] Moore, *op. cit.,* 624. Jones was elected by majorities of the black counties whether fictitious or real. In twelve Black Belt counties, where the Negro constituted more than two-thirds of the population (279,701 Negroes to 79,291 whites in 1890), Jones received a majority of 26,246 in 1892 as contrasted with a Kolb majority of 14,811 in the rest of the state. See "Politics and the Race Question in Alabama," *The Nation,* LIX (September, 1894), 211. See tabulation of the vote by counties, Montgomery *Advertiser,* November 18, 1892. For a compilation of material favoring Kolb, see also *Senate Miscellaneous Document,* No. 67, 53 Cong., 3 Sess. and *Senate Report,* No. 447, 54 Cong., 1 Sess.

[67] After the election of 1894, Daniel S. Troy, lawyer, legislator, and supporter of Oates spoke out against the illegal methods used to carry Montgomery County for Oates. He thought that "the very forms of the elective system must perish amidst such practices." John W. DuBose, "Article Number 122," Birmingham *Age-Herald,* June 27, 1914.

[68] Montgomery *Advertiser,* December 2, 1894; Clark, *op. cit.,* 159. The day after the election in 1894 Kolb charged that "frauds exceeding anything ever known in the history of this state or any other state" had been committed in Lowndes, Montgomery, Barbour, Bullock and other Black Belt counties. John Sparkman, Kolb-Oates Election of 1894, 39 (unpublished Master's thesis, University of Alabama, 1924). In twelve Black Belt counties Oates had a majority of 34,454 in 1894 and Kolb a majority of 8,688 in the rest of the state. "Politics and the Race Question in Alabama," *The Nation,* LIX (September, 1894), 211.

gifted with "virtue and intelligence."[69] Moreover, the "white" counties were now prepared to stuff ballot boxes and use similar methods against the Black Belt. However, leaders of Organized Democracy opposed a constitutional convention until the Populist revolt had spent itself—because they feared a convention which they might not be able to control.[70]

Although ballot box stuffing began in the Black Belt, it spread to every county in the state.[71] In 1892, after Kolb's defeat, J. C. Manning, Populist leader and preacher, said that "in the next state election the stuffed ballot boxes of the Black Belt will be met by equally well stuffed ballots from the white counties."[72] The Mobile *Register,* a Democratic newspaper, declared that "he spoke the truth . . . [because it was] not reasonable to suppose that one set of counties would look patiently upon the practices employed by another set to secure power without imitation."[73]

As a result of increased fraudulent election methods during the Populist period, an amendment or a constitutional convention to deal with the problem became a leading issue in Alabama politics. The Mobile *Register* ran a series of editorials advocating a constitutional convention soon after the Kolb-Jones election of 1892. It declared that the recent election had produced fraud on an unprecedented scale. The editor observed:

> We must provide against anarchy into which we will surely drift before long unless the causes which produce ballot box stuffing are abandoned. The practice of ballot box stuffing will extend from one county to another until elections will have lost all respect and legality. It is not pleasant to contemplate the existence of two governors in 1894. We doubt whether there is one more governor and one more legislature in the stuffed ballot box. The next birth will either be twins or an abortion.[74]

National conditions were propitious for the disfranchisement of the Negro by the end of the century. The Lodge Force bill had been defeated in the Senate in 1890; the last remnants of the old Force bill had been repealed by a Democratic Congress in 1894.[75] The Fourteenth and

---

[69] The Democratic state platform of 1892 proposed that the suffrage be limited to those of "virtue and intelligence." And the Sayre election law passed to carry out the platform disfranchised many illiterate whites and Negroes. Montgomery *Advertiser,* June 8, 1892.

[70] Mobile *Register,* June 8, 1892, January 24, 1893; Montgomery *Advertiser,* April 16, 1899.

[71] John Barnett Knox, Speech before Democratic State Convention, Mobile *Register,* April 26, 1900. Representative J. T. Shugart testified before a committee of Congress in 1897 that the practice of stuffing the ballot box had been brought to Birmingham by men from the Black Belt. *House of Representatives Report,* No. 597, 55 Cong., 2 Sess.

[72] Mobile *Register,* January 14, 1893. [73] *Ibid.*

[74] *Ibid.,* January 1, 1892.

[75] Holland Thompson, *The New South,* 48; Charles Austin Beard, *Contemporary American History,* 7.

Fifteenth Amendments had been so interpreted by the Supreme Court as to make their circumvention possible.[76]

There had been a conservative reaction in the North against the Radicalism of the earlier period. A new generation had grown up. Senator Morgan estimated that "more than half and probably three fourths" of the voters living in 1900 "had no part in conferring suffrage upon the Negroes and they are free from responsibility and largely from prejudice in the matter."[77] Most of the post Civil War leaders had passed from the scene. The Spanish-American War had tended to unite the North and South once again.[78] Captain Frank Shelley White, Senator Morgan's campaign manager in 1900, said in urging a constitutional convention that the time had come once again when Alabama, "in fact, as well as in name, represents one of the great sovereign states of this union. When Lawton and Wheeler stormed the heights of San Juan Hill it made Alabama equal to Massachusetts."[79] The Spanish-American War had another effect on the Southern Negro suffrage problem. As the United States acquired subject races overseas, the people of the North were forced to consider the race problem objectively, without any sentimental prejudices growing out of the Civil War.[80] They could not consistently support an educational test which would place the government of Hawaii, Puerto Rico, and the Philippines in the hands of a favored white minority and deny the same privilege to Alabama. The Negroes' exodus from the South into Northern cities increased the North's understanding of the South's position.[81]

By 1900, Mississippi, Louisiana, South Carolina and North Carolina had each disfranchised the Negro by the use of the poll tax, property, educational, or other qualifications. Moreover, the Louisiana Convention had invented the "grandfather clause," enabling all illiterate whites who could not meet the other qualifications but whose ancestors had voted prior to 1867 to register and vote. In 1900, none of these provisions had been declared unconstitutional by the Supreme Court. The grandfather clause had not yet come before the courts, but the Supreme Court of the United States had upheld the suffrage provisions of the Mississippi Constitution of 1890, which contained the "understanding clause."[82] Neither had the representation of any of the disfranchising states in Congress been reduced under the Fourteenth Amendment, the Olmstead resolution seeking to reduce their representation under the reapportionment based on the census of 1900 having been defeated in January, 1901.[83] Senator John T. Morgan wrote Charles H. Greer, editor of the Marion *Standard,* that Alabama could proceed with her disfranchising convention without fear of interference, since the passage "of the apportionment bill and the counting of the electoral vote" of 1900 had both taken place without action against the four disfranchising Southern states.[84]

---

[76] In a series of cases in the eighteen-seventies and eighties the Supreme Court defined the meaning of the amendments. It decided that the Fifteenth Amendment did not confer the right of suffrage upon anyone, but that it prevented a state (not a person or a group of persons) from giving preference in voting to one citizen over another on account of race, color, or previous condition of servitude.

[77] John Tyler Morgan, "Negro Suffrage in the South," *Congressional Record,* XXXIII (January 8, 1900), 674. A good summary of the "new attitude" of the North toward the Southern race problem can be found in the speech of Hilary A. Herbert before the Southern Conference on Race Relations held in Montgomery, Alabama, in 1900. See Speech of Hilary A. Herbert, Mobile *Register,* May 9, 1900.

[78] Paul H. Buck, *The Road to Reunion, 1865-1900,* 306-307.

[79] Montgomery *Advertiser,* January 26, 1900. Henry Ware Lawton of Indiana and Joseph Wheeler of Alabama were major generals in the Spanish-American War.

[80] William Roy Smith, "Negro Suffrage in the South," *Studies in Southern History and Politics,* 242. Speech of Emmett O'Neal before the Democratic State Executive Committee, Minutes of Democratic State Executive Committee, April 3, 1901, 19.

[81] Ellis Paxson Oberholtzer, *History of the United States Since the Civil War,* IV, 588.

Moreover, before 1901 the Populist movement had run its course. Reaction had set in and Alabama conservatives were eager to act while they were in complete control. Some Populists and former Populists favored the disfranchisement of the Negro in the belief that it would again bring a return of the ante-bellum two party system in Alabama—white men could then divide and reforms come rapidly.[85] Heretofore, wrote one observer of the Alabama and Southern scene "the Negro vote has made political progress exceedingly tedious. Reforms and more timely laws have come tardily, lest their suddenness might divide the white vote."[86] "Lily white" Republicans joined the disfranchising movement because they believed "that the only hope of the Republican Party and of political progress in the South" lay in the elimination of the Negro vote.[87] Other reformers wanted the disfranchisement of the Negro because the Negro vote had been used by the conservatives to defeat Populism. All of these factors, both national and local, encouraged those who would call a disfranchising convention in Alabama at the end of the century.

---

[82] *Williams* v. *Mississippi,* 170 U. S. 213 (1898).

[83] *Congressional Record,* XXXIV, 56 Cong., 2 Sess., 521, 609. A minority of the House of Representatives Committee on the Twelfth Census made a bitter report in favor of reduction of representation in all four states. *House of Representatives Report,* No. 2130, 56 Cong., 2 Sess., 121-146.

[84] Letter of John T. Morgan to Charles H. Greer, Birmingham *Age-Herald,* March 22, 1901.

[85] The newspapers encouraged this point of view. Birmingham *Age-Herald,* April 25, 1900. The Montgomery *Advertiser,* May 26, 1901, declared: "And we reassert the proposition which has not been successfully controverted, that it is best for any state to have two strong parties to contest for the control of affairs."

[86] Josiah W. Bailey, "A Case for the South," Birmingham *Age-Herald,* May 18, 1901.

[87] *Ibid.*

CHAPTER XV

DEMANDS FOR GENERAL REVISION OF ALABAMA'S CONSTITUTION OF PROHIBITION

The 1875 Constitution "of prohibition"[1] had become inadequate long before the end of the nineteenth century. Although agriculture made noteworthy advances after 1875, the state for the first time in its history made marked industrial progress—in coal and iron mining, iron manufacturing, lumbering, textiles, and the expansion of its railroads. Dozens of coal and iron corporations were founded and numerous banks were created in order to furnish commercial credit for old and new business activities. New York capital played an important part in the state's industrial and commercial growth. Old cities in South Alabama made progress but Birmingham, Anniston, Bessemer, and many other towns in North Alabama's mineral belt were born, became prominent industrial centers, and their population increased rapidly.[2] Between 1870 and 1900, the state's population almost doubled; Birmingham in less than thirty years became as large as Mobile and larger than Montgomery.[3] A shift of population toward North Alabama took place as that section's mineral belt developed.

As already indicated the constitution makers of 1875 showed a definite anti-industrial bias. Numerous restrictions written into that constitution soon began to hamper the state's growth. For example, the low limit placed on local taxation restrained both city development and the growth of the public school system. State aid to internal improvements had been forbidden and many decisions then made in the interest of retrenchment and economy now became outmoded.[4] Speaking in favor of a new constitution, Samuel Davies Weakley, later Chief Justice of the Alabama Supreme Court, declared that a "mere perusal" of the 1875 Constitution without a knowledge of Alabama history would show that the leading objectives of the 1875 document "were an economical administration of the government, the protection of the treasury from spoilation, the prevention of appropriations for any but public purposes, the saving of the credit of the state and its governmental agencies by denying its use in aid of private enterprise, even though of a quasi-public character, and the preservation of the property of a citizen from large tax levies."[5] Although these safeguards may have been needed in an era when the ignorant Negro electorate and Radical excesses made it doubtful whether a republican form of government could exist in Alabama, "conditions have vastly changed since 1875," he said. "The state has taken a distinct and decided step forward in all lines of development. Towns and cities then existing have grown and others have sprung into existence, attaining a size and rank which would not then have been deemed possible. As a result, limitations upon legislative power, which in 1875 were wise and timely, have now in many instances become intolerable restrictions upon further development."[6]

---

[1] Erwin Craighead, editor of the Mobile *Register,* in a speech before the Alabama Commercial and Industrial Association in Birmingham declared: "There is a great deal of don't do this, and don't do that, in the Alabama constitution. One of our own Supreme Court judges has described it as an instrument of prohibition. It was framed at a time when there was good reason to doubt what would be the outcome of a republican form of government under conditions that had never before existed in the state, and after a period of misrule that made conservative citizens fear that much liberty would be the forerunner of license. To guard against every possible evil and many purely imaginary evils, a fundamental law was provided, which has been found unwieldly, repressive, and unsuited to the times in which we live." *The State Must Not Stop Its Progress—Business Men Declare in Favor of a Constitutional Convention.* (Birmingham, 1896), 4. Hereinafter cited as *The State Must not Stop its Progress.* This pamphlet contains the report of a special committee appointed by the Alabama Commercial and Industrial Association (composed of delegates from commercial bodies all over the state) concerning the need for a new constitution. Also included are speeches and papers read before the Association by businessmen, editors, and educators in favor of a constitutional convention to re-write Alabama's fundamental law. The Association sent a petition in favor of a new constitution to the legislature.

[2] Ethel Armes, *The Story of Coal and Iron in Alabama,* 321, 333, 360, 436-439; Moore, *op. cit.,* 525-536.

[3] *Alabama Official and Statistical Register* (1907), 225-227.

The fast growing Birmingham area was especially hampered by the limit on municipal taxation of one-half of one per centum. Mobile, being in 1875 a city of some prominence, secured more liberal powers of taxation,[7] but the "framers of the constitution . . . never dreamed that . . . in Jones Valley nature had sown the seeds for a Pittsburgh and hence no provisions were embraced in that instrument to meet the requirements of a great city."[8] Alabama's cities could no longer sell bonds to construct public buildings, pave their streets, or make other improvements because the limited rate of taxation would not allow repayment. In 1895, Birmingham even found it necessary to send a commission to interview its bondholders and ask for an extension of one-half of its accruing interest.[9] An amendment allowing partial relief for Birmingham had been rejected in 1893 because of the difficulties of amending the constitution.[10] Additional taxation allowed Birmingham in 1898 under the only amendment added to the Constitution of 1875 proved insufficient for the city's expanding needs.[11] The *Age-Herald* pointed out that the rate of insurance in the city was exceedingly high because the city could not tax itself to provide adequate fire equipment.[12] Public improvements in Birmingham and other cities throughout the state lagged because of constitutional restrictions. In a speech in favor of a new constitution before the Alabama Commercial and Industrial Association, Erwin Craighead, editor of the Mobile *Register,* declared that "the right to tax himself for needed public improvements ought to belong to the citizen. This is withheld from him, no matter how able and willing he may be to pay the additional taxation. He should have the privilege of establishing schools, building roads, obtaining wholesome water, and disposing of refuse by means of sewers, if he is willing and able to pay for these essentials to human progress and happiness."[13] In his last message to the legislature, Governor William Calvin Oates declared that "the restriction of the right of cities to tax themselves retards their growth and development."[14] Governor Joseph F. Johnston in recommending a constitutional convention in 1896 said that the "preservation of municipal growth and credit" was urgently needed.[15]

---

[4] *The State Must not Stop its Progress,* 4-5.

[5] *Ibid.,* 12.

[6] *Ibid.*

[7] Article X, section 7, Constitution of 1875, gave Mobile the right to levy a tax of one per centum to pay its "existing indebtedness" and another tax of one per centum" to pay the expenses of the city government" until January 1, 1879, after which time Mobile could levy a tax of three-fourths of one per centum in each case.

[8] *The State Must not Stop its Progress,* 2.

[9] *Ibid.,* 15.

The whole state had outgrown the Constitution of 1875. The *Age-Herald* believed that the constitution "crippled and dwarfed enterprise, education and progress."[16] In no corresponding period in Alabama history had there been so many changes. It was essential that "some of the iron bands that have prevented the growth and development of the state should be struck off," declared Governor Johnston in his first message to the legislature. In his last message to the same body, Governor Oates contrasted the Alabama of 1875 and 1896 and concluded that the Constitution of 1875

---

[10] *Acts of Alabama* (1892-1893), 882.

[11] *Ibid.* (1896-1897), 1203. This amendment allowed Birmingham to levy an additional tax of one-half-of-one per centum "to be applied exclusively to the payment of interest on the bonds" of the city. Skinner, *op. cit.,* 765.

[12] Birmingham *Age-Herald,* January 20, 1901.

[13] *The State Must not Stop its Progress,* 5.

[14] Governor's Message, *Senate Journal* (1896-1897), 70. Oates believed that "every city with a population of 10,000 or upwards should have the right to levy as great a rate of tax for the use of such city as can be laid for state purposes." The tax limit of three-fourths-of-one per centum on the state and one-half-of-one per centum on the counties should remain since it was a protection against excessive taxation and neither the state nor the counties needed more funds, he said. Because of economy in government and increasing property values, the rate of state taxation had been lowered from 7.5 mills in 1875 to 6 mills in 1886, and to 4 mills in 1890. Going, *op. cit.,* 84.

[15] *Senate Journal* (1896-1897), 288.

[16] Birmingham *Age-Herald,* January 20, 1901. "The Alabama of 1930 [said the *Age-Herald,* April 24, 1901] will be a great and prosperous industrial state. Agriculture will not be shelved, but it will have a big rival in industry, and the new constitution should be broad and liberal enough to answer the needs of five millions of people engaged in export trade, in mining, in cotton milling, in iron and steel working, in a wide scope of manufacturing based on cheap fuel and raw materials, as well as in planting, stock raising, and the like."

> was framed and adopted 21 years ago when the state had just emerged from Reconstruction with its credit broken down and which with the surrounding circumstances, influenced the convention to frame a constitution adapted, as they supposed, to the necessities which then existed. These conditions have undergone very material changes in several respects. We have twice the railroad facilities, the farmers cultivate one-third more acres of the land, make one-third more cotton, grain and agricultural products, three times as many tons of coal are mined, three times as many cotton factories are in operation, and the population of the state is more than one-third greater than at that time.[17]

Although agrarian opposition to state aid for industry remained strong after 1875, the press in some North Alabama urban centers demanded that the constitution be amended to allow state aid for internal improvements, especially for railroads. Admitting that the state aid program had, because of mismanagement, all but bankrupted the state during Reconstruction, the Birmingham *Chronicle* declared "the policy was right, and Alabama, even though her substance was outrageously wasted and stolen, made more than she lost by her trial of a progressive policy."[18] North Alabama wanted a constitution which would offer "far better inducements than we can now extend under our constitution to those who would establish in our state manufacturing enterprises."[19]

The state government could not build or improve roads because the 1875 Constitution forbade the state from engaging in internal improvements.[20] Full responsibility for building roads and bridges was left to the counties, which of course could not sponsor a state wide road building program and were hampered also by a tax limit of five mills.[21] The legislature of 1884-1885 submitted for popular ratification an amendment which would allow counties to levy a special road tax not to exceed five mills. However, in spite of the support of many newspapers in the state, the proposal was defeated in August, 1886.[22]

Constitutional restrictions on local taxation also hampered the de-

[17] Governor's Message, *Senate Journal* (1896-1897), 70.

[18] Quoted in Going, *op. cit.*, 117.

[19] *The State Must not Stop its Progress*, 2.

[20] Article IV, section 54.

[21] Although some counties had sufficient funds under a levy of five mills, others were unable to build necessary roads, bridges, and public buildings. In an effort to secure necessary funds despite constitutional restrictions, several counties exceeded the limit and the Alabama Supreme Court declared the levies unconstitutional. *Frederick* v. *Northern Alabama Railway Co.*, 130 Ala. 407 (1901); Skinner, *op. cit.*, 758-759.

[22] *Acts of Alabama* (1884-1885), 826; Greenville *Advocate*, August 11, 25, 1886; Montgomery *Advertiser*, July 31, 1886.

velopment of the public school system. Finding it impossible to increase state taxation for schools, those interested in education turned to local taxation, one of the main sources of income for education in most of the states.[23] Some municipalities and counties did appropriate to public schools a part of the five mills which they could constitutionally levy, often at a sacrifice to internal improvements.[24] The legislature adopted a policy in the eighteen-eighties of creating numerous schools districts, many of which were given power to levy special taxes of five mills or less to be used solely for education.[25] However, the Alabama Supreme Court ruled that school districts were neither municipal corporations nor counties and hence as such had no right to levy taxes.[26] Furthermore, the Court later declared that although levied by a county or municipality, special educational taxes in excess of the five mills limit were unconstitutional.[27] Since state taxation was 5.5 mills and the state's constitutional limit was 7.5 mills, the legislature of 1894-1895 delegated to the city of Birmingham (whose municipal tax was already at the 5 mills limit) the right to levy the state's additional tax of 2 mills within the city to be used exclusively for schools.[28] The Alabama Supreme Court found the act unconstitutional because it allowed the city to collect a tax which it is "prohibited by the constitution from levying and collecting."[29]

After the Supreme Court voided the taxing power of school districts, the Alabama Educational Association, state superintendents of education, and other officials of the state government inaugurated a movement for a constitutional amendment providing for local taxation for schools. In 1888, Oscar R. Hundley of Huntsville introduced and guided a local taxation for schools amendment through the House, but it failed to pass the Senate.[30] Educational forces continued agitation for the proposed Hundley Amendment and the measure finally passed the legislature during the session of 1892-1893. The proposal conferred upon school districts the power to levy a special tax of not more than 2.5 mills to be used exclusively for public schools.[31] However, when submitted to the voters the measure failed of ratification in the Kolb-Oates general election of 1894, despite the fact that it received the support of the leading state newspapers, both candidates for governor, Dr. J. L. M. Curry, and the teachers of the state.[32] It was defeated because it did not secure a majority of all the whole vote cast (a very difficult requirement when political issues were paramount) in one of the most bitter gubernatorial elections in Alabama history.[33]

---

[23] Stephen B. Weeks, *History of Public School Education in Alabama,* 127-130.

[24] Skinner, *op. cit.,* 757.

[25] The legislature created 227 school districts between 1876 and 1899, many of which were given the power to levy special school taxes. Weeks, *op. cit.,* 132.

[26] *Schultes* v. *Eberly,* 82 Ala. 242 (1887); Weeks, *op. cit.,* 132.

[27] *Francis* v. *Southern Railway Company,* 124 Ala. 544 (1899).

[28] *Acts of Alabama* (1894-1895), 738.

[29] *Alabama* v. *Southern Railway Co.,* 115 Ala. 250 (1896).

[30] Montgomery *Advertiser,* November 18, 1888.

[31] The amendment further provided that the Negro and the whites might each receive from the levy the amount of taxes paid by each race, but this provision was not compulsory. *Acts of Alabama* (1892-1893), 1215.

After many adverse Alabama Supreme Court decisions and the defeat of the proposed Hundley Amendment, supporters of public schools were convinced that a constitutional convention was necessary to establish in Alabama a broad program of public education. Local taxation for public schools alone was sufficient reason for a convention, declared the *Age-Herald,* "for without it the public school system will remain incomplete and sadly crippled and the districts that desire better schools will be deprived of the right of taxing themselves for them."[34] The same editor believed that the limit on state taxation was wise but that there was never in any state the least danger that "any community would over tax itself."[35] "Local taxation for public school purposes will be an issue outranked in the convention by suffrage reform only," the *Age-Herald* predicted. It was pointed out that really "one should be the complement of the other" as an honest and intelligent electorate was based on education.[36] In a series of editorials, the *Age-Herald* called for a constitutional convention to abolish "pay" schools which "the self respecting poor cannot attend" and establish a broad public school system for the sake of the "barefoot boys and girls who will yet rule the state."[37]

In 1896, the Alabama Educational Association appointed a committee under the chairmanship of Dr. John Herbert Phillips (after other duties prevented Dr. J. L. M. Curry from accepting the post) in order to further by "all means the holding of a constitutional convention" to secure educational reforms.[38] The committee drafted resolutions to be presented to the legislature setting forth the "immediate and imperative need of a new constitution as the primary step toward educational progress in Alabama" and outlined "the constitutional provisions and legal enactments recommended by the teachers of the state."[39] Included among the reforms recommended were local taxation for public schools, higher qualifications for state superintendents, the establishment of school districts with taxing power, the creation of a state board of education, the allocation of a fixed per centum of the state's total revenues to education, a more equitable system of distribution for school revenues,[40] consolidation of schools,[41] and the reorganization and unification of the several departments of the state school system including the higher institutions of learning. With the support of Dr. J. L. M. Curry, who was then carrying on an educational campaign in Alabama, Dr. Phillips called on farmers, businessmen and all the citizens of the state for a crusade for education.[42] A new constitution was necessary, he said, because "any temporary legislation on the basis of our present organic law will simply make our 'patchwork' school system more hideous and more odious."[43]

---

[32] Weeks, *op. cit.,* 128-129.

[33] For example, no one voted against the amendment in Birmingham but it received only 3,519 votes to 9,156 votes cast for Kolb and Oates. In no county were the votes recorded on the proposed amendment anything like the gubernatorial vote. *Ibid.,* 130.

[34] Birmingham *Age-Herald,* February 6, 1901. "Local taxation for public schools is not compulsory taxation, but the right in each community to tax itself for better schools. The legislature cannot grant this privilege but the constitutional convention can," declared the *Age-Herald,* February 2, 1901.

[35] *Ibid.,* March 10, 1901. The editor argued that many localities had overbonded themselves during the Reconstruction era, but none ever overtaxed themselves.

[36] *Ibid.,* January 20, 1901. Although in favor of local taxation for public schools, the Montgomery *Advertiser* and Mobile *Register* were not enthusiastic in their support. Mobile, where the constitution allocated certain local tax funds to education, already had the best public school system in the state. Mobile *Register,* April 12, 1901; Weeks, *op. cit.,* 122.

[37] Birmingham *Age-Herald,* February 3, March 8, 10, 1901. On January 20, 1901, the editor criticized the existing system of allocating school funds as follows: "In a Black Belt County, for example, containing five hundred Negro children and twenty five White children it supplies money that is in part turned into politics or into private pockets. The White children are so scattered in such a district that they can not be gathered into a school, and the Negro teachers are willing to or are forced to accept less than the state allowance. On the other hand the state appropriation is not large enough in a north Alabama district to provide proper schooling for the children. The system is inelastic. It does not bend to circumstances and circumstances vary a great deal in the state."

The Alabama Federation of Women's Clubs,[44] the Alabama Industrial and Commercial Association,[45] organized labor in Birmingham,[46] State Superintendent of Education John W. Abercrombie,[47] and all the governors of the state in the eighteen-nineties demanded a constitutional convention in order to place additional support for education in Alabama's fundamental law. And two of the governors in messages to the legislature definitely linked public education with suffrage revision. Governor Johnston declared "universal education the only remedy for universal suffrage."[48] As early as 1891, Governor Seay said: "I consider a grant of power to the local authorities to be exercised at the request of the community to levy a special tax for the benefit of public schools, which could also be secured in a new constitution, even more important than ballot reform. Every remedy is largely an expedient except that which makes the voter a better man."[49]

---

[38] Birmingham *State-Herald,* October 25, 1896; *The State Must not Stop its Progress,* 17-18. Dr. Phillips was superintendent of the Birmingham public schools, president of the Southern Educational Association, and member of the National Committee of Twelve on Rural Schools, appointed by the National Council on Education. Other members of the committte were Dr. J. B. Cunningham, Birmingham, Professor T. C. McCorvey, University of Alabama, President J. K. Powers, Florence Normal School, President J. A. Liner, Evergreen, and Superintendent J. B. Graham, Talladega.

[39] *The State Must not Stop its Progress,* 18.

[40] Distribution should be on the basis of attendance rather than population.

[41] Dr. Phillips said: "It is time to abandon the idea that every man must have a school on his own plantation."

[42] Dr. Curry was at this time working in Alabama under the auspices of the Peabody Board for Southern education and the Slater Board for Negro education. *The State Must not Stop its Progress,* 18; Jessie Pearl Rice, *J. L. M. Curry, Southerner, Statesman and Educator,* 170-171.

[43] *The State Must not Stop its Progress,* 21. Printed in this same pamphlet with the committee's report is a paper read before the Alabama Educational Association by Lawrence D. Miller, Alabama historian and educator, in which he argued for a constitutional convention to aid education, since eighteen per cent of the whites and forty-one per cent of the total population of Alabama were illiterate. He declared that in the first instance there was a higher rate of illiteracy only in South Carolina, Louisiana, and New Mexico, and in the second in Louisiana, Mississippi, and New Mexico.

[44] "Conference of Alabama Federation of Women's Clubs," Birmingham *Age-Herald,* May 14, 1901. The conference passed resolutions in favor of local taxation for public schools, a school year of at least five months, compulsory attendance, adequate school buildings, and trained educators instead of local politicians as county superintendents.

The problem of local and special legislation became more serious each year under the 1875 Constitution. That document forbade any special or local law in favor of individuals or corporations when they could be provided for by general law or when the relief sought could be given by any court in the state. In an effort to bulwark this prohibition, the constitution required that every local bill had to be published in the local newspaper at least twenty days before it was introduced into the General Assembly. The legislative session was also limited to fifty days.[50] In fact the committee appointed to prepare an address to the people on the Constitution of 1875 declared that "the General Assembly can pass no laws except of a general and public character. All power to enact local or special laws for the benefit of individuals or corporations is prohibited, and the people are thereby protected against the heavy expense of legislation in which they have no interest."[51] The evils of local legislation, however, were not eliminated by the Constitution of 1875. The Alabama Supreme Court held that whether a case could be provided for by a general or local law was a matter of legislative discretion and the constitutional restrictions against local legislation proved of little value.[52] As a consequence "a separate set of laws for each county in the state" came into existence and lawyers found is difficult to "advise their clients upon many matters arising out of the counties of their residence."[53]

---

[45] *The State Must not Stop its Progress,* 9, 18-22.

[46] Birmingham *Age-Herald,* April 16, 1901.

[47] The educational awakening or the "modern era of public education in Alabama" began with the election of Abercrombie as state superintendent in 1898. Weeks, *op. cit.,* 135.

[48] Governor's Message, *Senate Journal* (1896-1897), 288.

[49] *Ibid.* (1890-1891), 34.

[50] Article IV, sections 5, 23, 24. Public or private educational institutions and industrial, mining, immigration, or internal improvements companies or corporations were especially exempt from the local law prohibition.

[51] Mobile *Register,* October 8, 1875.

[52] *Clarke* v. *Jack,* 60 Ala. 271 (1878); William L. Martin, *The Code of Alabama* (1896), I, 74.

In order to prevent local bills from interfering with the passage of general laws, the legislature of 1886-1887 submitted a proposed amendment to the people which provided that no local bill could be introduced into the legislature after the twentieth day nor passed after the thirty-fifth day of a legislative session.[54] The proposed amendment was defeated in August, 1888.[55]

The legislative session of 1876-1877 passed only 285 local and general laws,[56] which were printed in a volume of only 310 pages. The 1888-1889 session passed 616 local and general bills, which required a volume of 1,078 pages.[57] In 1898-1899 the legislature passed 949 local bills alone, which filled a volume of over 1,800 pages.[58] The local and general acts of the legislative session of 1900-1901 required a volume of nearly 3,000 pages.[59] More than 100 local bills were passed for Jefferson County alone during this legislative session.[60] The rapid increase in the volume of bills was due largely to an increase in the range of local bills.

Of the 949 local bills passed in 1898-1899, 136 created or regulated separate school districts; 131 incorporated or amended the incorporation laws of local churches, colleges, high schools, clubs and companies; 84 regulated the fees of constables and other local officials; 74 prohibited the sale of liquor within a certain distance of schools and churches or established local dispensaries; 72 exempted specific localities from certain sections of the code; 69 authorized towns and counties to issue bonds or levy special taxes for the support of schools and public improvements; 66 were for the relief of old sheriffs, Confederate veterans, and others; 65 were local road and bridge bills; 57 created or amended charters for towns, colleges, and companies of various kinds; 51 were livestock laws for certain beats; 42 relieved certain persons of the disabilities of nonage; 25 established local game laws; 13 declared liners (persons living on county lines) between counties to be citizens of one county; 9 changed persons' names; and 125 dealt with miscellaneous subjects. Among the miscellaneous laws was one to change the name of Big Bear River; a second authorized the use of typewriters in making records in a certain office; a third forbade interference with fences around a certain court house; and another forbade the beating of drums on public highways in beats number one, three, and ten in a certain county.[61]

---

[53] *The State Must not Stop its Progress,* 14.

[54] *Acts of Alabama* (1886-1887), 1035. It was also provided that no general law was to be amended after the twentieth day of a legislative session.

[55] Montgomery *Advertiser,* August 10, 1888.

[56] *Acts of Alabama* (1876-1877).

[57] *Ibid.* (1888-1889).

[58] *Ibid.* (1898-1899).

[59] *Ibid.* (1900-1901).

[60] Birmingham *Age-Herald,* March 10, 1901.

Governor Edward Asbury O'Neal devoted a goodly portion of his message to the legislature in 1886 to local legislation. In part he said:

> The evils of local legislation have long been recognized and felt. . . . In the pamphlet acts of the last session there are one hundred and ninety four pages of general laws and six hundred and thirty-seven pages of local laws, many of the latter clearly in conflict with the . . . constitution. The time of the legislature is largely taken up with consideration of local bills and measures of general interest are necessarily neglected. . . . Local laws are rarely generally known among those whom they effect, and often are soon forgotten until someone remembers or discovers them for some purpose of his own, possibly to the injury of others. For more than half a century this legislation has been accumulating on our statute books until it is probable the people of no two precincts in the state are living under the same laws, and possible that no single citizen knows or by any reasonable diligence can know, all the laws to which he is subject. It frequently happens that men are convicted of criminal offences under laws of local application long fallen into disuetude and forgotten in the community to which they applied. The codification of our local laws would make many large volumes, illustrating as nothing else could the excesses of this abuse of the law making power, which all thoughtful men . . . have long deplored.[62]

State Superintendent of Education John William Abercrombie said that the evil of local legislation was the sole cause of the defeat of the school bill in the session of 1900-1901.[63] The bill had been completely pushed off the calendar by local legislation. General laws were left for the last hectic days of the legislature. Time for consideration was lacking and much unwise and hasty legislation resulted. Governor Oates said in his message to the legislature in 1896 that the remedy provided by the Constitution of 1875 "has proven to be wholly ineffectual, and local legislation now claims the attention of legislators all through the session, and on the last day all the most important acts are presented to the governor for his approval when he has no time to . . . consider them, and if found objectionable in any particular there is no opportunity to send them back to the General Assembly for amendment."[64]

A form of "legislative courtesy" had come into general use, by which the various members of the legislature voted for the local bill of each other. Local bills were passed or defeated as the local legislator wished. The Mobile *Register* said:

---

[61] The writer went through the local acts of 1898-1899 and classified them under the above divisions. While not necessarily perfect, the classification is sufficiently accurate for illustrative purposes.

[62] Governor's Message, *Senate Journal* (1886-1887), 37.

[63] Montgomery *Advertiser,* October 13, 1901.

[64] *Senate Journal* (1896-1897), 71. Erwin Craighead declared that as a result of local legislation "the fifty days' session is crowded with hasty legislation, much that is undesirable becomes the law of the land through lack of the time in which to scrutinize it, and much that ought to become law is rejected or not considered at all, because crowded out in the rush of other matter." *The State Must not Stop its Progress,* 6.

> There are supposed to be two parts to the legislature. But, the House of Representatives is composed of sixty six smaller legislatures, and the Senate of as many as there are senatorial districts in the state. When the Assembly opens the hopper is full of local bills and as they are ground out they are referred to committees; not however for consideration, but for the purpose of ascertaining the views of the local representatives. It stands or fails as the local representative may determine. The result is that at the close of each session many bills of merit are left sleeping in the committee room, while others the vice and evil of which will be made manifest go upon the statute books by unanimous votes of the General Assembly, each member of which reasoned to himself that it was not his funeral. It would be less expensive and far less dangerous to have each county of the state make the laws for its own government.[65]

Some remedy for the evils of local legislation was, therefore, an important reason back of the demand for a constitutional convention. The plans recommended to curb excessive local legislation varied. Governor Oates wanted to follow the plan of many other states and place a long list of subjects in the constitution on which the General Assembly could not legislate.[66] Governor Johnston suggested that the representative pay for the cost of printing and reporting a local bill from the committee.[67] Others wanted to "relegate to the local boards of county commissioners all legislative questions affecting purely local affairs."[68] It was pointed out that while the legislature was over worked, the commissioners, whose main function was road building, might easily assume new duties. And on such matters as the passage of stock laws and the regulation of school districts, for example, they would know a "great deal more about what is wanted in their counties than any legislator at Montgomery."[69] Some matters on which local laws were passed could be provided for by general laws. For instance, the incorporation of towns and cities and the amending of their charters could be taken care of by a general law classifying them according to population and providing laws suited to their government in each group.[70]

---

[65] Mobile *Register,* February 24, 1893. "Anyone who has observed the procedure of the assembly in its action upon local bills must come to the conclusion that the assembly rarely does more concerning such bills than endorse the opinion of the member or members by whom they are presented." *The State Must not Stop its Progress,* 6.

[66] Governor's Message, *Senate Journal* (1896-1897), 71. The Indiana constitution of 1851 and the Minnesota constitution of 1857 were among the earliest to contain such a provision. The California constitution of 1879 listed thirty-three subjects on which there could be no local legislation. Thorpe, *op. cit.,* I, 420, II, 1079, IV, 2001. *The State Mut not Stop its Progress,* 7.

[67] Governor's Message, *Senate Journal* (1898-1899), 31.

[68] *The State Must not Stop its Progress,* 6.

[69] *Ibid.*

During the Populist agitation of the eighteen-nineties, many conservatives came to believe that there were "too many elections and too much politics in Alabama."[71] A state election for all members of the executive branch of the government, most county and local offices, all members of the state House of Representatives, and one half of the state Senate was held every two years. Since the state election was held in August, the election for federal officials followed in November and the selection of municipal officials often occurred even later in the year.[72] It was argued that the uncertainty resulting from frequent elections and numerous sessions of the legislature was "bad for business" and Alabama should have "more of business and less of politics."[73] Many advocated quadrennial elections and quadrennial sessions of the legislature. Governor Oates said that the governor and state officers only became "thoroughly familiar with their duties by the expiration of their two year term." It was customary to give the governor a second term, and Oates recommended that the governor be elected for four years and be made ineligible to succeed himself.[74]

Some wanted a constitutional convention in order to make constitutional provisions for a state wide primary system for Alabama.[75] The direct primary was first advocated in Alabama in the early eighteen-seventies as a means for securing united strength among the whites against Radical and Negro rule.[76] Since 1874, when Clarke County held the first primary in the state,[77] the primary had continually gained popularity as a means of giving the people a voice in the selection of their officials and combatting the Bourbon "courthouse rings." In 1879, the primary was used in the municipal elections in Montgomery and Mobile.[78] The legislature of 1884-1885 passed "An act to Regulate Political Primaries in Mobile County," the first primary law passed by the legislature in Alabama.[79] In the eighteen-nineties, the Populist demanded the primary as a means of opposition to the Bourbon controlled county and state conventions. In 1892, Reuben F. Kolb challenged Thomas G. Jones to allow the Democratic nomination for governor to be determined by a statewide white primary election.[80] Some thirty-five counties selected their nominees to the abortive constitutional convention of 1899 by the primary method. In that year most of the counties of the state were using the direct primary and a statewide primary election law had become a leading issue.[81] Although such a law might have been provided for by statute, some of its ardent supporters wished it placed in the fundamental law.[82] A statewide white primary, said the Birmingham *Age-Herald,* was the answer to Negro suffrage and should become a part of the new constitution. The whites could divide in the white primary, close ranks in the regular election, and the Negro vote would not count.[83]

---

[70] *Ibid.*, 14.

[71] *Ibid.*, 13.

[72] Samuel Davies Weakley wrote: We have first "the primaries and preliminary skirmishing for the gubernatorial and other nominations; then comes the regular campaign preceding the August election; almost immediately the machinery is set in motion for nominations to Congress, and before that election is over candidates for mayor and town officers begin to present their claims to the citizens." *Ibid.*

[73] *Ibid.*

[74] *Senate Journal* (1896-1897), 70.

[75] Birmingham *Age-Herald,* April 27, 1900, January 20, 1901.

[76] Allen Woodrow Jones, A History of the Development of the Direct Primary in Alabama, 182 (unpublished Master's thesis, Alabama Polytechnic Institute, 1953).

[77] *Ibid.*, 25-26.

[78] *Ibid.*, 55.

[79] *Acts of Alabama* (1884-1885), 480-483.

The convention movement also gained support from those who thought that a constitutional convention might make penal reforms. The Mississippi constitutional convention of 1890 forbade the lease of any convict "to any person or persons or corporation, private or public . . . after December 31, A. D., 1894."[84] Although the Alabama state legislature had attempted reforms in the convict lease system, most of the state's convicts were still worked in the mines of Birmingham under appalling conditions. The editor of the Mobile *Register* declared that "the same general principle of constitutional reform can . . . be applied to convict management as to the other departments of government. I would localize the handling of convicts as much as possible. State convicts I would put upon the state farm. This kind of employment has been practiced in the state of Mississippi with excellent effect upon the revenues of the state and upon the physical and moral condition of the convicts."[85] Advocates of improving Alabama's prison system maintained that a new constitution should provide for the separation of hardened criminals from first offenders and should establish a "reform school for juvenile criminals."[86]

[80] Moore, *op. cit.,* 622.

[81] Jones, *op. cit.,* 108, 116. Governor Johnston declared that state regulation of primary elections which "will guarantee absolute fairness in the vote and the count, will do more to secure the cooperation of all honest men, prevent rings and cliques from dominating the party, and secure fair elections than anything else. It is a lamentable fact that there is today more complaint of fraud and the use of illegal and corrupt methods in the primaries than in the elections." Governor's Message, *House Journal,* Special Session (1899), 19.

[82] Birmingham *Age-Herald,* January 20, 1901.

[83] *Ibid.,* May 9, 11, 1901. Some states were making provision for the direct primary by statutory law, others were placing it in the fundamental law. California wrote the direct primary into her constitution by amendment in November 1900. Thorpe, *op. cit.,* I, 452.

[84] Article X, section 223; Fletcher M. Green, "Some Aspects of the Convict Lease System in the Southern States," *Essays in Southern History,* 121.

[85] *The State Must not Stop its Progress,* 8-9. County convicts, by far the greatest number of all convicts, should be kept in the county and used to build and maintain roads, he said.

[86] *Ibid.*

There was considerable demand for reform of the judiciary. The system of circuit and chancery courts established by the Constitution of 1875 had become cumbersome.[87] The legislature's power to consolidate and abolish useless courts had been restricted. Section 4 of Article VI forbade the increase of the number of circuits beyond eight without a two-thirds vote of the General Assembly. The number had been increased to ten but Governor Oates said the "number should be increased to twenty," in order to relieve the overcrowded condition of the courts.[88] Moreover, since the constitution provided that no circuit could contain less than three counties,[89] additional circuit courts could not be created in highly populated centers like the Birmingham area. A resort to special courts created by the legislature and maintained by county funds had proven unsatisfactory.[90] Circuit court was held twice a year in each county and chancery court once a year in each district. In 1896, Governor Oates recommended more frequent and shorter terms, which would "empty the jails and save much cost to litigants and the state." When a grand jury failed to find bills in very important criminal cases the "judge should have power to order the solicitor to proceed by information. This would tend to suppress the horrible crime of lynching,"[91] he said.

Although given little popular support, Governor Oates recommended that all judges above the rank of probate judge be appointed by the governor and confirmed by the Senate.[92] He thought that the system of electing judges by the people subjected the judges to political influence and should be abolished. All judges were elected at the same time for a term of six years. Governor Oates maintained that "the judges of the Supreme Court should have a longer term, say nine or ten years, and it be so arranged that the term of one judge should expire every three years and thus a majority of experienced men would always be kept on the bench. The court is the expounder of the constitution and the final arbiter of all legal controversies, and hence uniformity is as important as correctness of principle in its rulings."[93]

In 1898, Governor Johnston declared the General Assembly took much time electing solicitors which it should use for legislative purposes.[94] Since legislative log rolling and trades accompanied the selection of solicitors, the choice of solicitors should be returned to the people. For similar reasons, Governor Johnston recommended that the railroad commissioners be elected by the people.[95] Others demanded that the election of solicitors and railroad commissioners be given to the people because the method was democratic and would result in the choice of better officials.[96] In 1898, two proposed amendments for popular election of solicitors failed to pass the legislature.[97]

---

[87] Governor's Message, *Senate Journal* (1896-1897), 73; Mobile *Register,* March 6, May 1, 1901. Erwin Craighead declared that "in place of the present system of courts it would seem advisable to have one court, a county court, to transact all the judicial business of the county, civil and criminal in equity and in probate." He also stated that Alabama's judicial system was so antiquated that "the incidents of the case celebrated by Dickens in his story of the suit of Jarndyce vs. Jarndyce can be repeated today in Alabama." *The State Must not Stop its Progress,* 7.

[88] Governor's Message, *Senate Journal* (1894-1895), 225.

[89] Article VI, section 4.

[90] *The State Must not Stop its Progress,* 14.

[91] Governor's Message, *Senate Journal* (1896-1897), 72-73.

[92] Oates had been chairman of the Judiciary Committee in the Convention of 1875, which reluctantly reported in favor of continuing popular election of judges because the committee feared that any other course might defeat the constitution at the polls.

[93] Governor's Message, *Senate Journal* (1896-1897), 71.

Because of the difficulties of the amending process, a constitutional convention became the only hope of those who wanted constitutional revision. In fact, many argued that a convention was needed to make the amending process easier. A two-thirds majority of each house could submit an amendment to the people, but only five proposed amendments were submitted in a period of twenty-six years and only one adopted. As previously indicated four of these amendments provided for additional taxation—one for roads, one for schools, and two for the municipality of Birmingham. Another would restrict local and special legis- ation. No doubt other proposed amendments would have been submitted by the legislature if the people had given those submitted a favorable vote. During the nineties, amendments were introduced in the Alabama legisla- ure to increase taxation for county purposes; to provide for a four instead of a two-year term for members of the executive and legislative departments; to allow local taxation for schools; to reduce the six-hundred square mile limit for counties; to fix the election and term of office of he judicial officers of the state; to regulate railroads so as "to prevent extortion in freight rates" and forbid free passes; to provide for popular election of solicitors; to allow Birmingham to increase its taxation; to authorize the courts of county commissioners to establish local school districts in order to relieve the legislature of the burden of local legisla- ion; to provide educational and property qualifications for voting; and o "restrict the suffrage to persons who shall furnish satisfactory evidence of having paid the poll tax assessed against them."[98] Some of hese amendments were passed by the required two-thirds majority in one house but failed to receive it in the other house; others failed to receive the necessary majority in either house; only three received the required number of votes in both houses.

The insuperable barrier to amending the constitution was the requirement that a proposed amendment receive a majority of the whole number of votes cast at a general election.[99] In a general election all attention was focused on politics and personalities; large numbers voted for candidates for office and failed to mark their ballots in regard to amendments.[100] After four proposed amendments had failed under the Constitution of 1875 because they did not receive a majority of the whole vote cast in a general election, the legislature in submitting for a second time the amendment to allow additional taxation for Birmingham decided to place the burden of voting in regard to the amendment on the opposition. It was provided that the ballots should have printed on them the words, "For Birmingham Amendment" and that "any elector desiring to vote for said amendment shall leave such words intact upon his ballot, and an elector desiring to vote against said amendment shall evidence his intention to so vote . . . by striking out said words with pen or pencil."[101] In August 1898, the Birmingham amendment, which allowed the city of Birmingham to levy a special tax of one-half of one per centum to pay both interest and principle on the city's bonded debt, received a majority of all the votes cast by this method and became the sole amendment to the Constitution of 1875. Only by subterfuge, as it proved, could the constitution be amended.[102]

---

[94] *Ibid.* (1898-1899), 25.

[95] *Ibid.*; Birmingham *Age-Herald,* September 2, 1901.

[96] *The State Must not Stop its Progress,* 8, 10.

[97] *House Journal* (1898-1899), 133, 168.

[98] *Senate Journal* (1890-1891), 346, 371; *ibid.* (1892-1893), 112, 210, 433, 526; *bid.* (1894-1895), 164, 215; *ibid.* (1896-1897), 121, 797; *House Journal* (1890-1891), 19; *ibid.* (1892-1893), 610; *ibid.* (1898-1899), 76, 209, 444.

Many of those who wanted suffrage revision and other general changes in the constitution at first favored the amending process over a constitutional convention. There were advantages to amending the old constitution instead of calling a convention to secure the desired revision. If amendments were submitted, the issues would be definite and voters could adopt some and defeat others. And fears of what a constitutional convention might do (a strong force in Alabama history because of unpopular decisions made by the conventions of 1861 and 1867) would not be aroused by proposed amendments.[103] But as it became apparent that revision could not be made by the amending process, many of its supporters joined the convention movement.[104] Moreover, many believed that the constitutional issues facing Alabama at the end of the nineteenth century were great enough to justify the calling of a constituent assembly.

---

[99] Article XVII, section 1; *The State Must not Stop its Progress,* 17.

[100] Montgomery *Advertiser,* April 12, 1899.

[101] *Acts of Alabama* (1896-1897), 1204.

[102] The legality of this procedure was upheld by the Supreme Court of Alabama. It was argued that this law really made inaction a vote for the proposal. The Court replied that the voter had no constitutional right to a ballot that would permit him to abstain from voting on a measure, and that the depositing of the ballot was in itself an affirmative action in favor of the amendment. *May and Thomas Hardware Company* v. *Mayor and Alderman of Birmingham,* 123 Ala. 306 (1899). For a discussion of the Birmingham Amendment see Walter F. Dodd, *The Revision and Amendment of State Constitutions,* 190-192.

[103] Governor's Message, *House Journal,* Special Session (1899), 15.

[104] Mobile *Register,* December 7, 1899, January 20, 1900.

CHAPTER XVI

ALABAMA POLITICS AND THE MOVEMENT FOR THE CONVENTION OF 1901

When the legislature passed the enabling act submitting the question of a constitutional convention to the people in 1898, it was only after a ong struggle within the Democratic party. A Democratic caucus in 1878 decided against a convention because Northern sentiment still would not allow the disfranchisement of the Negro, and disfranchisement was hen, as later, the major goal of the Democrats.[1] But as the years passed, agitation for a constitution grew in intensity. Some Democrats, including Governor Thomas Seay, urged a constitutional convention in 1890 at the time Mississippi moved to disfranchise the Negro.[2] Others biterly opposed a convention on the ground that the issue would divide he white man's party, since illiterate whites would be disfranchised along with the Negro by any educational or property qualification. The House of Representatives passed a bill during Seay's administration submitting the question of a constitutional convention to the people, but the Senate refused to concur.[3]

Governor Seay's successor, Thomas G. Jones, renewed the fight for constitutional changes either by amendment or convention.[4] The issue became a prominent one at the Democratic State Convention in 1892. The platform committee, of which Joseph F. Johnston was chairman, reported in favor of a constitutional convention in order to make reforms n the suffrage, education, finance, and taxation.[5] However, ex-Governor Thomas Hill Watts and John William Augustine Sanford opposed the report because they feared the Farmer's Alliance might choose a majority of the delegates. The Mobile *Register* agreed and declared that the Kolb counties would elect delegates who "will destroy railroads, drive away foreign capital seeking investment, undermine the foundation of corporations and do various other things which have smacked of socialism and communism."[6]

---

[1] Speech of Judge James Jefferson Robinson of Chambers, member of the legislature from 1872-1880. Montgomery *Advertiser,* April 23, 1899.

[2] *Senate Journal* (1890-1891), 12, 33-34.

[3] *Ibid.* (1888-1889), 365, 720.

[4] *Ibid.* (1892-1893), 45.

[5] Mobile *Register,* June 8, 1892; Montgomery *Advertiser,* April 16, 1899. Frank L. Pettus, speaker of the Alabama House of Representatives wrote: "Let us go before them [the people] with a call for a constitutional convention . . . and adopt, substantially, the Mississippi system." Letter of Frank L. Pettus in Birmingham *Age-Herald,* December 27, 1892.

Thomas H. Watts believed the fear of disfranchisement would cost the party twenty-five thousand white illiterate voters if the convention plank were adopted.[7] Other members of the convention were afraid that the United States government might interfere. Moreover, at this very time Reuben F. Kolb and his large following had withdrawn from the convention and regular Democrats feared the constitutional convention question might defeat the party at the polls. Because of these objections the convention plank was defeated and the Democratic State Convention adopted instead a plank in favor of election laws which would guarantee secrecy and "better secure the government of the state in the hands of the intelligent and virtuous."[8] The result was the Sayre election law.

Following the State Convention of 1892, two proposals for a constitutional convention were voted down by the Democratic legislature before the end of Jones' second term.[9] Jones' successor, William Calvin Oates, urged a convention in order to abolish frequent and unnecessary elections, reform the suffrage, allow additional municipal taxation, reduce the governor's appointive power, abolish the evils of local legislation, reform the judiciary, and give members of the legislative and executive branches of the government four instead of two year terms.[10] However, because the Democratic party was still divided, no action was taken by the legislature.

Governor Joseph F. Johnston's first message to the legislature recommended a constitutional convention.[11] A convention, he believed, was necessary in order to allow local taxation for school purposes, reform the judiciary, preserve municipal growth and credit, and reform the suffrage. Following the governor's message the House passed a bill submitting the question of a constitutional convention to the people,[12] but the Senate defeated the measure. The movement for a convention was generally popular in the Black Belt, but encountered the bitterest opposition from those senators representing the predominantly white counties.[13] They feared the disfranchisement of their poor white constituents and many of them had pledged themselves against a constitutional convention in their campaign for election.[14]

---

[6] Mobile *Register,* January 24, 1893.

[7] Montgomery *Advertiser,* June 8, 1892, September 25, 1901.

[8] *Ibid.,* June 9, 1892, September 25, 1901.

[9] *Senate Journal* (1892-1893), 11.

[10] *Ibid.* (1896-1897), 70.

[11] *Ibid.,* 288-289.

[12] *House Journal* (1896-1897), 1044; *Senate Journal* (1896-1897), 878.

[13] *Ibid.* (1892-1893), 1042-44. The Populists were bitterly opposed to a constitutional convention. "The calling of a constitutional convention is as certain as day follows night if the Democrats control the next legislature," declared the Populistic Tuscaloosa *American,* July 21, 1898. "That measure was presented at the last session and only defeated by four Populist votes."

As Governor Johnston pondered the possibilities of white disfranchisement, he reversed his position and in 1898 advised against a constitutional convention.[15] Johnston had long before identified himself with the common man's cause and during the Populist period was known as a "half-way Populist."[16] Since a large part of his support for governor had come from the "white" counties, he thought it foolish to disfranchise his own supporters. His message to the legislature in 1898 expressed his apprehension of an all powerful convention and his fear that a constitutional convention might further divide the Democratic party. Then, too, he said, the amendment giving Birmingham the power to levy additional local taxes proved that further reforms were possible through the amending process.[17] Naturally, the governor did not divulge the fact that he was influenced by a rising tide of opposition to the convention.

Soon after the legislature met in 1898, the Democratic party held a caucus on the subject of a constitutional convention.[18] The caucus was divided, but finally pledged itself to a convention after adopting four resolutions placing limitations on the proposed convention. Gallant soldiers and sailors could not be disfranchised. The removal of the capital could not be considered. The whole population as the basis of representation as well as the limit placed on state taxation by the Constitution of 1875 could not be altered.[19] Fifty-seven representatives and sixteen senators pledged themselves to support the bill for a convention,[20] but it passed the House only after an extended struggle.[21] The opposition, led by representatives from North Alabama, argued that "the defects of the present constitution can be cured by amendment."[22] A North Alabama member introduced a resolution declaring that "the right to vote should be kept inviolate."[23] Although North Alabama representatives attempted dilatory tactics, the constitutional convention bill passed by the narrow margin of 52 to 41.[24] It had already been passed in the

---

[14] *Senate Journal* (1892-1893), 1042-1044.

[15] *Ibid.* (1898-1899), 25.

[16] One of Johnston's political opponents declared he was like the Irishman's bird which "looked like a turkey, gobbled like a turkey, but was roosting in the wrong place." Moore, *op. cit.*, 632.

[17] *Senate Journal* (1898-1899), 26.

[18] Mobile *Register*, December 6, 1898.

[19] *Ibid.*

[20] *Ibid.*, December 9, 1898.

[21] William Woodward Brandon of Tuscaloosa, Thomas LaFayette Bulger of Tallapoosa, and William Thomas Cofer of Cullman bitterly opposed the measure.

[22] *House Journal* (1898-1899), 450; Mobile *Register*, December 6, 1898.

[23] *House Journal* (1898-1899), 450.

[24] Mobile *Register*, December 14, 1898. According to the Mobile *Register*, December 11, 1898, the opposition "organized a movement to slip out and prevent a quorum. Forty-nine members were brought back and the doors locked by order of the speaker."

Senate by a vote of 18 to 11.[25] Despite his earlier opposition, Governor Johnston signed the bill.[26]

After the passage of the enabling act, increased opposition arose to a constitutional convention. Some Black Belt leaders believed that the Democratic party's pledge not to strike provisions from the old constitution against removal of the capital might not be honored.[27] Others in the Black Belt were apprehensive lest the convention might provide that the representation in the legislature be based on white population as it was prior to 1868. If the Negro were eliminated as a voter, would he still be counted in the basis of representation? "If we have a constitutional convention," said the *Russell Register,* "the counties of the Black Belt of Alabama may as well know beforehand that the chances are at least a hundred to one that they are goners so far as representation in the General Assembly (and the state convention as well) is concerned."[28] At the same time the counties of North Alabama were clamoring for increased representation. The Birmingham *Age-Herald* said:

> When the ignorant Negro voter is eliminated the white voter in the Black Belt will have all the political power he can reasonably demand without doing injustice to Jefferson County. A white voter in South Alabama will then far exceed a white voter in Jefferson county. . . . Representation should be based on votes cast, but if that be voted down by main strength, then let representation based on population be full and just in Jefferson county and in North Alabama. Justice in this respect is very important if the new constitution is to endure a long time. The present representation is greatly unjust, and the elimination of the Negro voter would make it notoriously so. For example, three Black Belt counties containing 60,000 are given a senator

---

[25] *Ibid.,* December 11, 1898. *Senate Journal* (1898-1899), 326.

[26] Johnston's views on the suffrage are somewhat inconsistent and hard to explain. After living in the Black Belt for many years, he became a wealthy Birmingham lawyer and industrialist and championed the "people's cause." In 1892, he was the author of the educational qualification plank in the conservative Jones' platform, which proposed to limit the right to vote to those gifted with "virtue and intelligence." Montgomery *Advertiser,* June 8, 1892; Moore, *op. cit.,* 643. Perhaps this was his real opinion, but after some floundering, politics finally placed him on the other side of the issue. After 1890, when he formally entered the race for governor, Johnston's popular support centered in North Alabama.

[27] There was considerable agitation among the Populists for moving the capital to Birmingham to get it out of the hands of the Black Belt crowd. Birmingham leaders argued that that city should have the capital because it was fast outgrowing Montgomery. Montgomery *Advertiser,* March 26, 1899: Moore, *op. cit.,* 632. Article IV, Section 39, of the Constitution of 1875, said, "No act of the General Assembly changing the seat of government of the state, shall become a law until the same shall have been submitted to the qualified electors of the state at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location." This section had been placed in the constitution of 1875 in order to prevent aspirants for the capital from combining against Montgomery for removal and then each seeking to secure the capital as Selma, Mobile, Montgomery, Wetumpka, Marion, and Statesville did against Tuscaloosa in 1845.

[28] Quoted in Montgomery *Advertiser,* January 19, 1899.

and Jefferson county with 140,000 people is given but one. A white voter in the former would be equivalent to a round dozen in the latter, either in the convention or in the hall of the legislature.[29]

Mobile County, one of the most populous and influential in the state, also feared the loss of an entrenched interest. Since 1854, Mobile had been allowed the special privilege of using liquor and certain other license taxes for the support of schools,[30] money which in other counties went into the state treasury. The convention of 1875 wrote a recognition of this privilege into the constitution[31] and Mobile's public schools were the best in the state. A convention might strike this section from the constitution.[32]

People all over the state, remembering the Carpetbag era, were apprehensive lest the new constitution remove the restrictions on taxation and state aid to corporations in the Constitution of 1875.[33] Since 1875, the rate of state taxation could not exceed three-fourths of one per centum; county and municipal taxation one-half of one per centum.[34] Debtors, whose property had been protected since the adoption of the Radical Constitution of 1868 by a homestead exemption of 80 acres of land or $2,000, or a personal property exemption of $1,000, feared a convention which might delete these clauses.[35] Others feared lest imprisonment for debt, outlawed since the Radical convention of 1867, be reinstituted.[36]

Although, as already cited, the legislature placed certain limitations on the proposed convention, many believed this unconstitutional as a convention of the people was the ultimate source of authority and could not be bound by a legislature. "The constitutional convention [wrote the editor of the Vernon *Courier*] will be untrammeled by the acts that the legislature may pass. When the people assemble to regulate the powers of the lawmakers in the future, all power is inherent in the people and the convention will not and cannot be hampered by any suggestions made by the lawmakers."[37] Moreover, the legislature had made no pledge that the new constitution would be submitted to a vote of the people; neither had they promised that illiterate white voters would not be disfranchised.[38] The disfranchising constitutions of Mississippi, South

---

[29] *Age-Herald,* March 31, 1901.

[30] *Acts of Alabama* (1853-1854), 190-195.

[31] Article XII, section 11.

[32] Mobile *Register,* June 11, 1901.

[33] Montgomery *Advertiser,* January 11, 19, March 9, 1899.

[34] Article X, sections 4 and 5.

[35] Article XIV, sections 1 and 12.

[36] Montgomery *Advertiser,* April 23, 1899. The arguments of J. J. Robinson (member of the Alabama legislature from 1872-1880) that the Radicals forbade imprisonment for debt in order to escape punishment for a crime they so often committed are printed in this issue.

[37] Quoted in Montgomery *Advertiser,* January 6, 1899.

[38] The Enabling Act, Mobile *Register,* December 21, 1898. For a good summary of all the fears aroused by the convention movement, see Governor Johnston's Message, *House Journal,* Special Session (1899), 17.

Carolina, and Louisiana had been proclaimed and illiterate whites had been disfranchised.[39]

No doubt, it was the opposition of the poor whites, especially of North Alabama, which proved to be the greatest barrier to a constitutional convention. In party caucuses, the legislature, county conventions, and state conventions, their leaders opposed the movement and asked the embarrassing question of how the Negroes could be disfranchised under the Fifteenth Amendment without the disfranchisement of the uneducated whites. The Tuscaloosa *American,* a Populist newspaper, defended the right of the poor whites to the suffrage as follows:

> Past history teaches us that the rule of the so called 'virtuous and intelligent,' the rule of the rich and the favored ones of the earth has ever been of the most tyrannical and despotic character. Under such rule but the two classes exist, the master and the slave, but two kinds of homes, the splendid palace and the miserable hovel. True manhood's ambition is crushed out of the toiling masses while the rich revel in vice and splendor. This is no fancy picture. The success of the Democratic party insures the disfranchisement of the great masses of the toiling people. . . . Not only will disfranchisement follow but the safeguards that have hitherto been thrown around the taxpayer will be swept aside.[40]

As the campaign for delegates progressed, the wholly irrelevant free silver issue came to the surface again,[41] each faction (free silver and gold standard) seeking to control the coming body. Since Governor Johnston was a "free silver" man, charges and countercharges of attempts to control the convention were made on each side. And in the campaign for delegates several county committees excluded all Democrats who had voted for John McAuley Palmer and Simon Bolivar Buckner in 1896 (the "gold-standard" Democratic candidates) from the Democratic county primaries.[42]

During the session of the Democratic State Convention in Montgomery in March, 1899, the question of making the constitutional convention "a party issue" almost broke up the convention.[43] The Johnston faction opposed making the convention "a party issue," and during the convention, the governor himself was in constant communication with the anti-convention faction. However, the convention voted 257 to 247 in favor of pledging all Democrats to support the movement.[44] A platform, restricting the constitutional convention, was adopted in order to lessen the fears of its opponents.[45] Governor Johnston had been defeated on the question of making the constitutional convention a party issue and many of his bitter political enemies had been nominated to serve in that body. The anti-Johnston faction would control the convention.[46]

---

[39] Woodward, *op. cit.,* 340-343; Charles A. Beard, *Contemporary American History,* 10-11.

[40] Tuscaloosa *American,* July 28, 1898.

[41] Montgomery *Advertiser,* January 12, 13, March 14, May 5, 1899. On January 26, 1899, the Democratic State Eexcutive Committee met and provided for county nominations for delegates to the constitutional convention and the selection of delegates to a state convention for the purpose of selecting 33 delegates from the state at large to the constitutional convention.

[42] *Ibid.,* January 12, March 11, 19, 1899.

[43] The *Advertiser* of March 30, 1899, declared that when the resolutions committee reported "the convention at once fell into the greatest confusion ever seen in a Democratic meeting or far surpassing any scenes heretofore beheld in a Republican convention."

Although under the two term tradition, Johnston could not succeed himself as governor, he was politically ambitious and intended to run for the United States Senate against John T. Morgan in 1900.[47] He feared the effects of the convention movement on his political career. The convention was under the control of his enemies,[48] and his North Alabama supporters were protesting lest they be disfranchised. After a poll of the individual members of the legislature, which assured him he had a majority, he called the legislature into special session to repeal the convention bill.[49]

---

[44] Minutes of the State Democratic Convention, March 29, 1899. The test vote in favor of committing the party was 332 to 166.

[45] The platform reads as follows: "We are in favor of holding a constitutional convention for so regulating the right to vote as to perpetuate the rule of the white man in Alabama.

"The constitutional convention shall regulate suffrage so as not to conflict with the Federal Constitution and for the best interest of the people and taxpayers of Alabama.

"There shall be invested in such constitution a provision limiting the rate of taxation by the state, counties and municipalities and such rate of taxation shall not exceed the rate now fixed by the present constitution.

"The constitution must be submitted for rejection or ratification.

"We pledge ourselves not to deprive any white man in Alabama of the right to vote except for conviction for infamous crimes.

"The State capital shall not be removed.

"The provisions and restrictions in the state constitution as to corporations shall remain unchanged.

"We instruct all Democratic members of the convention to faithfully carry out instructions." Minutes of the State Democratic Convention, March 29, 1899.

[46] By chance or design, as the Chattanooga *Times* pointed out, most of the men of ability in the proposed convention would be "Gold Democrats." "The Populistic, Bryanistic, Johnstonite politicians in the crossroads were passed when sober work was to be done for the state," the *Times* observed. "By 'natural selection' the people aimed at securing the services of the best men. This resulted in putting a large number of sound money men in as delegates to the constitutional convention. Sound money was not thought of. It merely worked out naturally, that in seeking for the best that kind of men were found. They were selected without reference to their money views." Montgomery *Advertiser,* May 11, 1899, quoting the Chattanooga *Times.*

[47] Montgomery *Advertiser,* March 11, April 13, 1899; Moore, *op. cit.,* 647-649.

[48] William C. Oates, Thomas G. Jones, Willis Brewer, George P. Harrison, and Richard Henry Clark, all gold Democrats and prominent political enemies of the governor had been nominated by the Democratic party as delegates to the convention. Montgomery *Advertiser,* March 28, 1899.

[49] *Ibid.,* April 12, 21, 1899. Alabama newspapers charged that Johnston's bold

As the legislature could consider in a special session only those problems listed by the governor in his proclamation, the governor asked for repeal of the enabling act, submission of amendments to reform the constitution, and a primary election law.[50] He had called the special session, he declared, because of dissension aroused by the issue; the action of the state convention in making the issue a party question; amendments to the Constitution of 1875 would cost less and be more easily and satisfactorily accomplished; few changes in the Constitution of 1875 were possible since the party had placed so many limitations on the proposed convention; the personnel of the proposed convention would not be such as to insure confidence and respect; there was no guarantee that the pledges made by the legislature in the enabling act and by the Democratic State Convention would be kept; certain rights of the people might be taken away by an arbitrary convention; and should the convention fail to carry, its defeat would do great damage to the Democratic party organization.[51] Consternation now reigned in Democratic ranks—a Democratic governor had defied his own state executive committee and state convention. A new issue had been born, which was likely to divide the Democratic party to a greater extent than the constitutional convention bill.[52]

Although the governor had secured a majority of the legislature pledged to repeal, he was opposed by a large majority of the important state leaders of the Democratic party. Every Alabama congressman except one, condemned the action of the governor in calling a special session to repeal the bill.[53] Two ex-governors (William C. Oates and Thomas G. Jones) and both United States senators (John T. Morgan and Edmund W. Pettus) denounced Johnston, declaring that he had exceeded his constitutional authority.[54] They pointed out that the Constitution of 1875 expressly provided that the amending process was

---

action in repealing the convention bill was an attempt to manufacture issues for the senatorial campaign. The Atlanta *Constitution* called it "one of the boldest and most daring fights in political affairs ever attempted in the South." Quoted in Montgomery *Advertiser,* April 27, 1899.

[50] Governor Johnston's Proclamation, *House Journal,* Special Session (1899), 3-4. Additional legislation might be passed by a two-thirds vote of the legislature.

[51] Governor's Message, *House Journal,* Special Session (1899), 7-20. The governor appealed to the history of the state in his own defense, citing the conventions of 1861 and 1867 as examples of the "desolation and distress" which a convention could cause the state. Popular fear of the influence of corporate interests in the proposed convention also seems to have been a determining factor in Johnston's decision to repeal the convention bill. See letter of Frank P. O'Brien to Robert McKee, McKee Collection. Alabama Department of Archives and History.

[52] The Montgomery *Advertiser,* April 21, 1899, declared that never before in the history of Alabama had a governor defied the state convention of his party.

[53] Lawrence Dean Miller, *History of Alabama,* 299.

[54] Montgomery *Advertiser,* April 26, 29, May 2, 3, 1899.

exempt from the governor's signature.[55] They argued that in the first place the proposal for a constitutional convention came under the amending clause and should never have been submitted to the governor for his signature. In the second place, whether the bill was constitutionally or unconstitutionally presented to the governor, the legislature and the governor took unretractable steps when they passed and signed the enabling act. Henceforth, all power was with the people, they declared.[56]

The Democratic State Executive Committee met, condemned the governor, and organized a campaign committee to work against repeal.[57] It called a huge mass meeting in Montgomery for May 2, 1899, the night before the legislature was to meet in special session the next day. Morgan, Pettus, Oates, and Jones addressed the meeting, denouncing the governor and urging a constitutional convention.[58] The mass meeting brought pressure on the legislature to meet and adjourn without repeal, but the legislature repealed the convention bill after four days of debate.[59] This was the only accomplishment of the special session, as neither a primary election bill nor amendments to the constitution on suffrage and taxation for public schools passed.[60] The Populists in the legislature voted with the Democratic majority for repeal and resolved in addition that any educational or property qualification for voting in this state "would be un-American, un-Democratic, un-Republican, contrary to the doctrine of the People's party and obnoxious to the great majority of the people of Alabama."[61]

The press of the state was largely against the governor.[62] The Birmingham *Age-Herald,* a former administration supporter, said that "treason to party thus became treason to the state and to the people."[63]

---

[55] Article V, section 13.

[56] Montgomery *Advertiser,* May 2, 3, 1899. Governor Johnston did not seek legal advice from his attorney general, Charles G. Brown, but from ex-Chief Justice Robert C. Brickell, who declared Johnston's course of action constitutional.

[57] *Ibid.,* April 22, 1899.

[58] *Ibid.,* May 3, 1899.

[59] The vote in the House was 60 to 34; in the Senate 19 to 12. *House Journal,* Special Session (1899) 31, 43, 64.

[60] Five members of the House united in a resolution against adjournment without passing constitutional amendments, since the legislature by repealing the convention bill took upon itself the solemn duty of substituting one method of constitutional reform for another. *Ibid.,* 63-64.

[61] *Ibid.,* 54.

[62] The Montgomery *Advertiser,* April 26, 28, May 5, 1899, estimated that ninety per cent of the press of the state was opposed to Johnston. However, one daily each in Mobile and Montgomery (Mobile *Item* and Montgomery *Journal*) and many weeklies in North Alabama supported the governor. The Montgomery *Journal* continued its opposition to a convention after the repeal of the convention bill. "If the Mississippi plan is to be adopted, the *Journal* believes the voters of Alabama would just as soon have their votes stolen by partisan election managers as to be humiliated and denied the right of suffrage by partisan registrars appointed for that purpose. It raises the standard of battle in favor of the poor and illiterate whites and indicates an intention to fight the battle on that line." Birmingham *Age-Herald,* April 21, 1900.

[63] Birmingham *Age-Herald,* April 13, 1899.

And Black Belt newspapers, which had never liked the governor, now assumed a more acrid tone.

> Joe Johnston [said the Selma *Times*] hails from Dallas. We speak of it with shame. He knows that the people of the Black Belt held up the hands of the party when Republicanism was rampant and the people were being led into the mistake of populism. He knows that the people of this section of the state ask to be relieved of the burden of the black man, and the people in the northern part of the state wish to relieve them, and he calls an extra session of the legislature to defeat the will of the people. We call him Judas because he betrays his friends that made him; we call him Judas because he bargains with the enemy for our undoing, and for his own selfish ends, and we call him Judas because the only thing left for him to do is to hang himself on the first tree and thus rid the state of its chief trickster who disgraces its highest executive office.[64]

Although defeated in the legislature, the Democrats, favoring a constitutional convention, were determined to have the decision reversed. "We convention advocates," confessed the Wilcox *Progress,* a Black Belt newspaper, "realize our defeat keenly, but bow in humble submission to the will of the legislators until the next session of the legislature when the issue will come up again. We will then be found pulling together for white supremacy and purer politics."[65] New elections for governor, the legislature, and United States senator were to be held in 1900; advocates of a convention vowed to make it an issue in the campaign of that year. When Governor Johnston announced his candidacy to succeed Senator Morgan, both Johnston and Morgan made the convention an issue in the campaign. Governor Johnston asked voters to credit him for defeating a convention, which might have arbitrarily taken away the rights of the common man.[66] Senator Morgan declared a vote for him was a vote for the convention and denounced Johnston as a traitor to the Democratic party.[67] Morgan was assured of another term in April, 1900, when a majority of legislators partial to him was nominated in Democratic county primaries and conventions over the state.[68] Morgan's campaign manager, Frank S. White, then issued the following statement: "Morgan's victory is a triumph for better politics in Alabama. It means a constitutional convention. The state can no longer do without it. Alabama cannot exist with a foundation under it of corruption at the polls. The constitutional convention and the elimination of fraudulent elections are bound to be the results."[69]

However, William James Samford, nominated by the Democratic

---

[64] Quoted in Montgomery *Advertiser,* April 18, 1899.
[65] Quoted in Montgomery *Advertiser,* May 13, 1899.
[66] Mobile *Register,* January 20, 1900; Montgomery *Advertiser,* April 7, 1900.
[67] Mobile *Register,* January 24, April 5, 28, 1900.
[68] *Ibid.,* April 15, 1900.
[69] Montgomery *Advertiser,* April 17, 1900.

State Convention in Montgomery for governor, had not chosen to make the convention issue a part of his campaign.[70] After his nomination, the state convention debated the issue and decided in deference to Samford to endorse the movement for a convention in a resolution rather than to place it in the platform.[71] The convention again placed the same restrictions on the constitutional convention and added a pledge of submission of the new constitution to popular vote.[72]

In December, 1900, the legislature with a larger Democratic majority than in 1898, passed an enabling act to provide for an election on the question of calling a constitutional convention.[73] Populist and Republican legislators opposed a convention but their opposition was ineffectual.[74] The act provided for the election of 155 delegates, 100 of whom were to be elected by counties on the basis of apportionment in the House of Representatives. Two delegates were to be elected from each of the nine congressional districts, one from each of the thirty-three senatorial districts and four from the state at large. As the existing apportionment in the House and the Senate favored the Black Belt and other South Alabama rural counties, South Alabama would control a majority of delegates to the convention. The same limitations contained in the first enabling act were placed on the proposed constitutional convention, with the new pledge added that the constitution would be submitted.

The Democratic State Committee met on January 15, 1901, and declared the constitutional convention a party issue.[75] Later, the Democratic State Convention met in Montgomery and sanctioned every restriction yet placed on the constitutional convention; these they set forth in a platform to the people.[76]

John V. Smith, president of the Alabama Railroad Commission, was made chairman of a campaign committee to work for the constitutional convention.[77] This committee adopted the slogan of "white supremacy, suffrage reform, and purity in elections." Campaign literature and thousands of personal letters were mailed to voters over the state.[78] The committee and the conservative press attempted to give the movement the "fervor of a crusade." The Montgomery *Advertiser* characterized the constitutional convention question as "the greatest issue of the past twenty-five years."[79] Speakers were sent into doubtful counties to work for the convention. They kept before the people the restrictions on the convention and vowed they would be honored.[80] Oates, Jones, Morgan, Pettus, and the national representatives in their respective districts canvassed the state for the convention.[81] Many speakers asked for the disfranchisement of the Negro in the name of "white supremacy" and an honest electorate. John Hollis Bankhead declared that the disfranchisement of the Negro would bring the return of the antebellum two party system in Alabama, but John T. Morgan disagreed because "Democracy is a creed in the South."[82]

---

[70] Mobile *Register,* January 11, 1900; Montgomery *Advertiser,* April 27, 1900.

[71] Montgomery *Advertiser,* April 26, 27, 1900; Mobile *Register,* May 1, 1900. Frank S. White, R. M. Cunningham, and John Knox led the fight in convention for a new constitution.

[72] Mobile *Register,* April 27, 1900.

[73] *Acts of Alabama* (1900-1901), 224.

[74] Montgomery *Advertiser,* August 7, 1900.

[75] Mobile *Register,* January 16, 1901.

[76] Montgomery *Advertiser,* March 20, 1901; Minutes of the Democratic State Convention, March 19, 1901. "After an experience of thirty years [the platform contended] . . . it has been demonstrated that as a race [the Negro] . . . is incapable of self-government. . . ." It made the convention a party issue, pledged submission for ratification, and repeated all the preivous pledges.

[77] Smith was also William J. Samford's manager in his campaign for governor in 1900. Minutes of the Democratic State Executive Committee, April 3, 1901.

[78] *Ibid.,* Birmingham *Age-Herald,* April 21, 1901.

The remnants of the Populist party, weaker than at any time in the past decade, opposed the convention, but the opposition was unorganized except in a few counties.[83] Most of the "poor whites," now back in the Democratic party, were fighting the convention from that vantage point. Many delegates in reporting to the executive committee on conditions in their respective counties testified that most opposition came from illiterate poor whites who were afraid of being disfranchised.[84] John V. Smith urged campaign speakers to "quiet the fears of our brethren in the hill counties and in the wire grass."[85] Speakers were to ignore all controversial subjects, he declared. Nevertheless, the *Age-Herald* called for free discussion of "important questions that must come before the convention."[86] Senator Morgan advised that all issues be avoided except the issue of "white supremacy."[87]

The Republican party organized a campaign to oppose a constitutional convention, but at the same time endeavored to elect as many delegates as possible to the proposed convention.[88] However, the Republican party, as in other states of the South, was divided into two factions—the "black and tans" and "lily whites," which assumed opposite views on Negro disfranchisement. The Birmingham *Times,* the only daily Republican newspaper in the state, represented the "black and tans," arguing that the Negro was and had always been the mainstay and hope of the Republican party in the South; if the Negro were disfranchised, the Republican party would lose the patronage in Alabama.[89] On the other hand, the "lily white" Huntsville *Tribune,* a weekly Republican newspaper, declared:

---

[79] Montgomery *Advertiser,* March 29, 1901.

[80] Mobile *Register,* April 9, 1901; Birmingham *Age-Herald,* April 21, 22, 1901.

[81] Birmingham *Age-Herald,* April 17, 1901.

[82] *Ibid.,* May 7, 1901; Mobile *Register,* May 19, 1901.

[83] Minutes of the Democratic State Executive Committee, April 3, 1901.

[84] A Democratic politician in Walker County advised the Democratic State Executive Committee "to go into the mountain counties and talk white supremacy. . . . I don't believe it a good policy to go into the hills and tell them that Booker T. Washington will be allowed to vote or William H. Council [president of the Agricultural and Mechanical College for Negroes, Normal, Alabama] or anybody else because they are educated, the minute you do that every white man who is not educated is disfranchised on the same proposition." *Ibid.*

[85] *Ibid.* However, all opponents of a convention were not to be found in these areas. John R. Tompkins, lawyer and legislator from Mobile opposed a convention because "the masses of the people realize that the state was never before in a condition of such political tranquility. The state is overwhelmingly Democratic even in the Black Belt, where the colored element is so large a majority. They realize that the Negroes vote with us, and if there be a single Republican officeholder it is desirable to remove, I cannot name him. . . ." Mobile *Register,* April 17, 1901.

[86] Birmingham *Age-Herald,* April 13, 16, May 13, 1901.

[87] *Ibid.,* March 22, 1901.

> We expect to vote for Republican principles, Republican gentlemen when they are nominees, but we expect to advocate and support white man's government and take the chance of future Republican success in the south. Surely there is none now and never can be until the Negro, as a politician and voter makes his exit. . . . Since the illiterate Negro forms the basis of Republican strength in Alabama, men unfit to lead any party, men whose methods are despicable to refined men, have become the awkward, the uncouth, the unworthy standard bearers of the Republican party, a party which if it represents anything, represents intelligence, progress and higher civilization.[90]

On April 23, 1901, 70,305 votes were cast for a convention and 45,505 against,[91] a majority of 24,800 votes for the convention. Twenty-five counties, all of them "white counties" and most of them North Alabama counties, voted against the convention.[92] Five counties in the southeastern or Wiregrass section of the state returned majorities against the convention. Jefferson, a North Alabama county and Johnston stronghold, gave a majority of twenty votes to the convention, despite Birmingham's needs for a new constitution. Black Belt counties gave such large majorities for the convention that it is safe to conclude that even on an issue so vital to the Negro as his franchise, the Black Belt leaders could still manipulate the Negro vote.[93] Dallas, with a popula-

[88] *Ibid.,* February 26, April 26, 1901; Mobile *Register,* February 27, 1901.

[89] Quoted in Birmingham *Age-Herald,* February 26, 1901; Mobile *Register,* April 12, 1901.

[90] Quoted in Montgomery *Advertiser,* March 26, 1901.

[91] *Alabama Official and Statistical Register* (1903), 141; Birmingham *Age-Herald,* April 24, 25, 1901.

[92] The counties which returned majorities against the convention were Baldwin, Blount, Butler, Cherokee, Chilton, Clay, Coffee, Conecuh, Coosa, Crenshaw, Cullman, Dale, DeKalb, Elmore (which voted against the convention because of a local interparty Democratic fight), Etowah, Fayette, Franklin, Geneva, Jackson, Lauderdale, Marion, Marshall, Shelby, St. Clair, and Winston. *Alabama Official and Statistical Register* (1903), 141-142; Birmingham *Age-Herald,* May 8, 1901; Mobile *Register,* May 8, 1901.

[93] In the privacy of the State Democratic Executive Committee meeting, about two weeks before the election, some Democratic leaders frankly admitted they intended "to vote" or "count out" the Negro. One local Black Belt leader in reporting to the committee on conditions in his county said: "We have four Negro votes to one white vote. We have no white Republicans and buried the last Populite

tion of 9,285 whites and 45,372 Negroes in 1900, cast 5,668 votes for the convention to 200 against. Lowndes, which had 5500 Negro and 1000 white voters in 1900,[94] cast 3,226 votes for the convention to 338 against. Other large majorities in favor of the convention were recorded in the Black Belt counties of Greene, Perry, Hale, Marengo, and Sumter.[95]

---

about a month ago. All we want is a small vote and a large count." John Thomas Heflin of Chambers County, later United States Senator, reported: "We have a very patriotic set of managers and probably all the Negroes will vote for the constitutional convention." Whereupon, a delegate from the Black Belt county of Lowndes stated that in his county even as in Chambers County, the Negro vote was "organized by the Democrats and I think I can safely state that Lowndes will take care of herself . . . as she has heretofore and send up a good majority for the convention." Minutes of Democratic State Executive Committee, April 3, 1901.

[94] *Ibid.*

[95] See *Alabama Official and Statistical Register* (1903), 142, for the official tabulation of the vote by counties.

CHAPTER XVII

THE CONVENTION OF 1901: SUFFRAGE PLANS

When Alabama's sixth constitutional convention met in Montgomery, May 21, 1901, all of the one hundred and fifty-five delegates were present.[1] One hundred and forty-one delegates were recognized by the Democratic caucus as regular Democrats.[2] Seven delegates were Populists, six Republicans, and one an independent Democrat.[3] All Populists and Republicans came from the hill country of North Alabama except one Populist and one Republican each from the Wiregrass section.[4] No Negro was elected to the convention as the Negro for some time had been excluded from elective office in Alabama.

Two former governors of Alabama, two former justices of the State Supreme Court, two former attorneys-general, one member of the constitutional convention of 1865, four members of the convention of 1875, the chairman of the Democratic State Executive Committee, ninety-six awyers, twelve bankers, four journalists, several physicians, teachers, and engineers were members of the convention. Because of the preponderance of lawyers, the 1901 convention is often referred to as "the awyer's convention"; and some of the ablest lawyers in the state were n the convention.[5] At least thirty-eight of the convention's members were Civil War veterans. Forty-five had served in the legislature and seventeen in the legislature which called the convention. Sixty-two members were college graduates and twenty-eight others had completed one or more years of college work. Many had been county solicitors, constables, probate judges, or mayors of small towns throughout the state. The majority of the convention consisted of men in their late forties or older, "at least one third grey heads," according to Max

---

[1] *Journal of the Proceedings of the Constitutional Convention of 1901,* 3-4. Hereinafter cited as the *Journal of the Convention of 1901.*

[2] Montgomery *Advertiser,* May 22, 1901.

[3] The independent Democrat came from Elmore County where as a result of an ntraparty fight the local committee had recognized the independent (A. E. Williams) and the state committee another candidate.

[4] Populist members were Lewis H. Reynolds of Chilton, Edmund A. Phillips of Clay, J. M. Foshee of Conecuh, William Thomas L. Cofer of Cullman, S. L. Studdard of Fayette, John A. Byars of St. Clair. Republican members were James B. Sloan of Blount, John H. Porter of Coosa, D. C. Case of DeKalb, William D. Mulkey of Geneva, William H. Bartlett of Marshall, and Newman H. Freeman of Winston. Montgomery *Advertiser,* May 22, 1901; Mobile *Register,* April 24, May 22, 1901.

[5] Montgomery *Advertiser,* June 25, July 30, 1901.

Bennett Thrasher, New York *Evening Post* correspondent in Montgomery. After watching their deliberations for more than three weeks, Thrasher concluded that they were a very "conservative body of men."[6] Naturally, many of the younger members of the convention would subsequently become prominent in the life of the state. At least seventeen delegates, who had not previously served in the legislature, later became members of that body. Emmet O'Neal (son of Governor Edward Asbury O'Neal) and Charles Henderson were to become governors of the state; J. Thomas Heflin and Frank S. White were later United States Senators.[7]

On the eve of the convention, the Democrats held a caucus to choose a president. Ex-Governor Oates and Tennent Lomax, both of Montgomery, and John B. Knox of Anniston were candidates for the presidency. All were able men. Oates, whose "empty sleeve" was a constant reminder of his Confederate service, was an important member of the convention of 1875. After serving in Congress from 1881 to 1895 he had resigned in order to become governor, having defeated Populist Reuben F. Kolb in the close gubernatorial campaign of 1894. As the Populist movement declined, Governor Oates urged the legislature to call a constitutional convention.[8] Because of this record of service, Oates was a strong contender for the nomination. However, in the months before the convention met, he had gone on record as opposed to the "absurd grandfather clause" and any property qualification for voting, both of which many of the delegates favored.[9] Moreover, he had further alienated a majority of the convention when he declared on the eve of the convention that "the disfranchisement of the whole Negro race would be unwise and unjust. They constitute a large minority of our state's population—over 800,000. Among them are many honest, industrious, and good citizens, capable of fairly understanding the issues of a campaign."[10] Oates was also opposed by railroad corporations, very strong in the convention,[11] because of his veto while governor of legislation favorable to their interests.[12]

Tennent Lomax, a lawyer and solicitor of Montgomery County, was also a candidate for the presidency of the convention. However, Lomax did not have the experience of Oates nor the backing of the railroads and Birmingham industrialists, whose candidate was John B. Knox, corporation lawyer of Anniston, Alabama.[13] Knox represented the rising industrial class of North Alabama, whose conservative interests—especially continued control of Negro labor—had already brought about a liaison between that class and the Black Belt Bourbons. He was also acceptable to the business interests of Mobile, where he was supported as "a lawyer of distinguished ability . . . a publicist well acquainted with Alabama and its political history."[14] The Birmingham *Age-Herald* was one of his earliest and most ardent supporters and as Black Belt leaders deserted Oates they gave Knox their backing.[15] The fact that many of the county newspapers supported Knox indicates also the broad basis of his appeal.[16] Moreover, Knox had not yet committed himself to the Mississippi, Louisiana, or any other plan of disfranchisement. Many Black Belt and South Alabama leaders favored him because he was from North Alabama, where many poor whites would have to be placated if the new constitution were to receive popular sanction when submitted for ratification.[17] Futhermore, Knox was not an officeholder and the press had been critical of a preponderance of professional politicians in the convention.[18] Because of Knox's overwhelming support, Oates and Lomax withdrew and the Democratic caucus elected Knox by acclamation.[19] The *Age-Herald* thought the selection of Knox over Oates symbolic of a new era in Alabama history. "The state is now in the hands of its young men—of men to whom the Civil War is history—men full of faith in the possibilities and resources of Alabama,"[20] declared the editor.

---

[6] *Ibid.,* June 16, 1901.

[7] The above facts come from a study by the author of the lives of 142 of the 155 delegates. Biographical material was taken from Owen, *op. cit.,* III, IV, and from sketches of most of the delegates in the Montgomery *Advertiser,* May 26, 29, June 2, 9, 16, 23, July 28, August 11, 1901. The presence of ninety-six lawyers in the convention is verified by *Official Proceedings,* III, 3017.

[8] Governor's Message, *Senate Journal* (1896-1897), 70.

[9] Letter to the Montgomery *Advertiser,* May 15, 1901. See also Mobile *Register,* January 24, May 16, 1901.

[10] Letter to the Montgomery *Advertiser,* May 15, 1901.

[11] Birmingham *Age-Herald,* February 26, 1901; Mobile *Register,* February 27, 1901; Montgomery *Advertiser,* July 14, 28, 31, 1901.

[12] Mobile *Register,* May 16, 1901.

---

[13] Montgomery *Advertiser,* July 21, 1901. Knox's federal income tax returns in 1895 (before the federal income tax of 1894 was declared unconstitutional) showed that he had the largest professional income in the state of Alabama. He argued cases before the Supreme Court of the United States and "his reputation as a lawyer outgrew local bounds, and business men and great industrial institutions brought him cases from distant points." A. B. Moore, *History of Alabama and her People,* II, 457.

[14] Mobile *Register,* April 7, 1901.

[15] Birmingham *Age-Herald,* March 8, 24, 1901.

[16] Knox secured much publicity when the Democratic State Convention nominated him as a delegate from the state at large by a much larger majority than the other three delegates from the state at large (Robert J. Lowe and Frank S. White, Birmingham; William C. Oates, Montgomery). Minutes of the Democratic State Convention, March 19, 1901; Birmingham *Age-Herald,* March 19, 20, 21, 1901.

[17] "It is fitting [said the Birmingham *Ledger*] to give the presidency to a man from a white county in the upper part of the state. If there is to be serious opposition to the work of the convention it will come from these counties. The delegates know these things full well." Quoted in the Mobile *Register,* April 9, 1901.

[18] Montgomery *Advertiser,* January 8, February 17, 1899; Mobile *Register,* April 9, 25, 1901. Knox had been chairman of the Democratic State Executive Committee and a delegate from the state at large to the Democratic National Convention in 1892 and 1896. He had managed Joseph F. Johnston's campaign for governor in 1896, but had never held a state or federal office.

[19] Mobile *Register,* May 21, 22, 1901.

Although Knox, ex-Governors Oates and Jones, and Judge Thomas W. Coleman each commanded a personal following in the convention, no one dominated the convention.[21] Voting was often along sectional lines and on some issues a compromise was necessary. Knox, however, wielded great power in the appointment of various committees.[22] He promptly showed his conservatism on economic matters and a basic trend in the convention by making ex-Congressman George P. Harrison, one of the most prominent corporation lawyers in Alabama, chairman of the committee on corporations.[23] Harrison was also placed on the committee on taxation along with wealthy ex-Congressman William A. Handley, who was "probably interested in more railroads, mines, banks and other enterprises than any other man in the state."[24] Gregory L. Smith, attorney for the Louisville and Nashville Railroad and several large banks in Mobile, was made chairman of the judiciary committee.[25] Other important committees and their chairmen were Judge Thomas W. Coleman, committee on suffrage and elections; ex-Governor Oates, committee on the legislative department; ex-Governor Jones, committee on the executive department; Emmet O'Neal, committee on local legislation; Joseph B. Graham, committee on education; Cecil Browne, committee on taxation; John B. Weakley, committee on municipal corporations; Phillip H. Pitts, committee on representation.[26]

"Constitution making [declared the Mobile *Register*] is done mainly in committee rooms and some of the abler members of the committees are kept hard at work . . . delving into the constitutions of other states, enquiring into the decisions of the United States Supreme Court and preparing sections for submission to their fellow committee men."[27] The unwieldly convention of one hundred and fifty-five members made the committee system all the more important. Alabama's first constitutional convention contained forty-four delegates and no previous convention had exceeded one hundred members. One delegate introduced an ordinance to limit any future constitutional convention to one hundred members.[28] The editor of the *Register* thought there was "little question that a score of men could frame a better constitution than the eight score in Montgomery."[29]

---

[20] Birmingham *Age-Herald,* May 22, 1901.

[21] Montgomery *Advertiser,* May 26, 1901; Mobile *Register,* May 26, 1901. Many of the southern disfranchising conventions were dominated by one man. United States Senators J. Z. George and Benjamin Tillman dominated the disfranchising conventions of Mississippi and South Carolina respectively. Vernon Lane Wharton, *The Negro in Mississippi, 1865-1900,* 211; George Brown Tindall, *South Carolina Negroes, 1877-1900,* 81. Although governors, United States senators, and other high officials served in the constitutional conventions of other southern states, this was never true of Alabama where the press beginning in 1819 opposed it.

[22] Knox was also chairman of the committee on rules, which adopted the regulations under which the convention was to operate, decided on twenty committees and the duties of each. *Rules of the Constitutional Convention, 1901, with Lists of Standing Committees* (Montgomery, 1901), 1-23.

[23] *Journal of the Convention of 1901,* 71; Montgomery *Advertiser,* July 21, 1901. Harrison was "general counsel for the Columbus and Western, the Western of Alabama, and the Charleston, Savannah and Mobile Railroads," all of which were among the leading roads running through the state. *Northern Alabama, Historical and Biographical,* 741.

[24] Mobile *Register,* August 4, 1901. See *Journal of the Convention of 1901,* 71, for members of the committee on taxation.

[25] *Journal of the Convention of 1901,* 70; Owen, *op. cit.,* IV, 1581.

[26] *Rules of the Constitutional Convention, 1901, with Lists of Standing Committees,* 20-27.

The committee which "towers above all others is the Committee on Suffrage and Elections," wrote a newspaper correspondent from Montgomery.[30] Certainly the revision of the suffrage was the cardinal reason for the assembling of the convention and the committee of twenty-five on the suffrage received the constant attention of the people and the press. Its chairman, Judge Thomas W. Coleman of the Black Belt, was a graduate of Princeton, an ex-slaveholder, Civil War veteran, member of the constitutional convention of 1865, legislator, and a former associate justice of the State Supreme Court.[31] Twenty-one of the twenty-five members of the committee were lawyers.[32] Although one delegate described the committee as coming "from the cities and the country . . . from the Black Belt and the hill counties . . . from the mountains of North Alabama and the flat lands of South Alabama,"[33] nine of the members of the committee were from the Black Belt and the most able of the other members represented the industrial and urban centers of the state.[34] Ex-Governor Oates, ex-Associate Justice Richard Wilde Walker, ex-Congressmen George P. Harrison and William Anderson Handley, Frank S. White, Emmet O'Neal, Gregory Little Smith, James Weatherly, and Richard Channing Jones, formerly president of the University of Alabama, were among the more important members of the committee. Harrison, Weatherly, and Smith from Opelika, Birmingham, and Mobile respectively, were railroad lawyers and as noted elsewhere Handley represented the conservative industrialists of North Alabama.[35]

---

[27] Mobile *Register*, June 2, 1901.

[28] *Official Proceedings of the Constitutional Convention of the State of Alabama, 1901*, I, 133. This is a four-volume *verbatim* record of the convention which will be hereinafter cited as *Official Proceedings*.

[29] Mobile *Register*, July 16, 1901.

[30] *Ibid.*, June 2, 1901.

[31] Owen, *op. cit.*, III, 375; Montgomery *Advertiser*, May 26, 1901.

[32] *Official Proceedings*, III, 3061.

[33] *Ibid.*, III, 3081.

[34] See standing committees of the convention, *ibid.*, I, 101.

[35] Opponents of the grandfather clause and the whole majority plan of the suffrage claimed that Knox "stacked" the committee against them from the beginning. *Ibid.*, III, 3121.

Repugnance for dishonest elections was proclaimed by President Knox in his opening address as the primary reason for the disfranchisement of the Negro. The convention had met to establish "white supremacy by law" and overthrow the revolutionary methods of "force and fraud" used in Alabama since Reconstruction lest representative government perish in Alabama, Knox said. He reviewed the history of the disfranchisement movement since 1890 and condoned the grandfather clause which allowed more whites to vote than Negroes, but this, he declared, was also true of any educational, property, or other qualification. The grandfather, understanding, property, intelligence, and other provisions adopted by Southern states "are justified," he said, "because . . . the Negro is not discriminated against on account of his race, but on account of his intellectual and moral condition. There is a difference . . . between the uneducated white man and the ignorant Negro. There is in the white man an inherited capacity for government, which is wholly wanting in the Negro. Before the art of reading and writing was known, the ancestors of the Anglo-Saxon had established an orderly system of government, the basis in fact of the one under which we now live. The Negro on the other hand, is descended from a race lowest in intelligence and moral perceptions of all the races of men."[36]

Although the establishment of "honest elections" by means of disfranchising the Negro was most often cited as the main purpose of the Alabama convention of 1901, other motives have been assigned to the movement by the delegates, the newspapers, and the historians.[37] William O. Scroggs declares that the white counties came to the conclusion that there was no way to unseat the Black Belt unless the fictitious Negro vote was abolished.[38] And William H. Skaggs, a Populist, maintains that the convention was the work of the "Black Belt Oligarchy," who wished to disfranchise the illiterate whites.[39] A reading of the newspapers and debates of the convention furnishes ample evidence of all three of these motives. All delegates wished honest elections; and other motives from which they acted generally depended upon the economic class or part of the state they represented. Throughout the convention white county delegates tested any proposed plan by the criterion of whether it would allow the Black Belt to use the fictitious or real Negro vote.[40] And delegates from the Black Belt and business and industrial centers of the state were just as anxious in the light of the Populist revolt to limit the franchise to "the intelligent and the virtuous,"[41] a desire expressed less often because of circumstances (the constitution had to be ratified and the Democratic party had made a no white disfranchisement pledge) than that of disfranchising the "ignorant, viscious, and incompetent" Negro voter, but just as real.[42]

---

[36] *Ibid.*, I, 9-12. Knox also paid high tribute to McKinley for his Southern policy ("refusing to lend his approval to any movement looking to the reduction of our representation in Congress or the Electoral College") and pointed to the fact that the North could hardly interfere in favor of the inferior race in the South when the United States had labeled many people in its newly acquired empire as inferior by disfranchising them.

[37] Horace Mann Bond, *Negro Education in Alabama,* 166

[38] William O. Scroggs, "The New Alabama," *The South in the Building of the Nation,* II, 322. This was offset, of course, by the poor white's fear of their own disfranchisement.

[39] William H. Skaggs, *The Southern Oligarchy,* 131.

Although the motives from which any individual acted in regard to the convention were often complex, it is not difficult to say which of the several sections gave the greatest impetus to the convention movement. In Alabama, it came from the black counties[43] (both the Black Belt and counties in which the Negro held the balance of power) which in turn were supported by the business interests. These groups wished to disfranchise most of the Negroes and the uneducated and propertyless whites in order to legally create a conservative electorate. Although tired of fraud and revolutionary methods, they were not willing to disfranchise the Negro alone—to do so would be suicidal since they had long remained in power with his vote. In order to accomplish their objective they would have to make concessions to the poor whites in the present but not in the future. As Knox declared in his initial address, the no white disfranchisement pledge does not extend "beyond the right of the voters [already of age] now living."[44] And although whites in this category were enfranchised by various means for the moment, other clauses were written in which would soon disfranchise many of them.

---

[40] *Official Proceedings,* II, 2687, III, 2962, 2966, 2982, 3035, 3037, 3086, 3119, 3279; Montgomery *Advertiser,* July 30, August 22, 1901.

[41] This phrase was used time and again and when taken in context generally meant not only the intelligent and honest but those with thrift enough to acquire property. See *Official Proceedings,* III, 2914, 2926, 2929, 3024, 3028, 3056, 3194. Edgar Gardner Murphy declared their goal was "the supremacy of intelligence and property." Murphy, *Problems of the Present South* (1909 edition), 199.

[42] *Official Proceedings,* III, 2875, 2958, 3022, 3093, 3282, 3333. Montgomery *Advertiser,* June 12, 22, 28, July 14, 17, 30, August 22, 1901. In 1905, Francis G. Caffey, a lawyer who was practicing in Montgomery at the time of the Alabama convention, wrote concerning its motives: "It was generally wished by leaders in Alabama to disfranchise many unworthy white men. . . . To rid the state eventually, so far as could possibly be done by law, of the corrupt and ignorant among its electorate, white as well as black, the poll tax and vagrancy clauses were put into the constitution." Francis G. Caffey, *Suffrage Limitations at the South,* 4-5.

[43] The legislative vote on the enabling act, the popular vote on the call of the convention, newspaper accounts, and debates of the convention all indicate the main incentive came from the black counties. See Birmingham *Age-Herald,* May 23, 1901; Montgomery *Advertiser,* July 30, 1901; *Official Proceedings,* III, 2966, 2982, 2994, 3079, 3084, 3086. In Mississippi, where the movement occurred before the Populist revolt (1890), the white counties moved to abolish the power of the black counties through a reduction of their Negro vote. But the drastic reduction of the white as well as the Negro electorate which followed indicates that many whites were caught in their own trap. Wharton, *op. cit.,* 207; Albert D. Kirwan, *Revolt of the Rednecks. Mississippi Politics: 1876-1925,* 73.

[44] *Official Proceedings,* I, 15.

Although many delegates felt that the large opposition vote against calling a convention made doubtful the ratification of even "a very conservative constitution,"[45] the convention in its fourth session passed an ordinance honoring the pledge that the new constitution would be submitted for popular sanction.[46] Henceforth, the popularity of any decision as well as its value as a part of the organic law was a cardinal point of consideration.[47] Some of the delegates were sorely troubled by the awareness that they had assembled to reverse the trend of almost a century of democratic government in Alabama. Universal white manhood suffrage had existed since 1819 and universal manhood suffrage since 1868. Despite the no white disfranchisement pledge, a majority of the convention wanted to change not only the decision of 1868 but also that of 1819. Consequently, many delegates opposed the publication of the full record of debates because it would reveal the intent of every decision made—not only to the opposition in the state but in the nation. One delegate did not want the Supreme Court of the United States to be able "to search for light amid the darkness of the debates on the Fourteenth and Fifteenth Amendments."[48] Another opposed making " a political record . . . in black and white that some of the delegates will have to be dodging for twenty years to come."[49] "We will say things down here [said J. Thomas Heflin] in our Southern way, and in the great old commonwealth of Alabama, that we do not want read and criticised day after day as we deliberate in this body."[50] Fortunately, those who wanted to keep a full record "for the enlightenment of the people" and for posterity were in the majority.[51]

---

[45] Mobile *Register,* May 23, 1901. The *Register* quoted the Prattville *Progress* as follows: "There is one thing certain, that the people of the state have already demonstrated at the ballot box, that the convention must adopt a very conservative constitution or it will not be ratified." The Mobile *Daily Item,* April 25, 1901, an opponent of the convention, declared that "the strong opposition put up by the Antis will have a sane influence on the constitutional convention." The convention had been called by a majority of only 24,800 (largely from the Black Belt) when a majority of 50,000 had been expected. *Ibid.,* April 24, 1901; Birmingham *Age-Herald,* April 25, 1901. J. V. Smith, chairman of the campaign committee for the convention, called on the convention to proceed with the "utmost caution and prudence" because of the division in the state as shown by the vote. *Ibid.,* May 15, 17, 1901.

[46] *Journal of the Convention of 1901,* 40. Governor William J. Samford had pledged that if the convention did not submit the constitution to a popular referendum, he would submit it by proclamation. Mobile *Register,* April 13, 1901.

[47] Throughout the *Official Proceedings,* many references are made to the fact that this innovation or that part of the suffrage article would cause the defeat of the constitution at the polls.

[48] *Official Proceedings,* I, 55.

[49] *Ibid.,* I, 59.

[50] *Ibid.,* I, 71. In a letter to Charles H. Greer, a member of the convention, Senator Morgan spoke of "the silent progress we are making" against Negro suffrage and advised that the Alabama convention "take a lesson from the Cubans [whose convention was in session] and discuss the Negro problem behind closed doors." Birmingham *Age-Herald,* March 22, 1901.

[51] Some delegates pointed to the value of Madison's notes in interpreting the

The framing of a suffrage article which would meet the party pledge and not conflict with the Constitution of the United States was the problem of the suffrage committee.[52] According to the party platform the convention would not disfranchise any of the 232,476 white males of voting age (31,681 were illiterate), and yet would disfranchise most of the 181,345 male Negroes of the same age (73,399 of whom were literate).[53] Under the enabling act, each member of the convention took an oath to support the Constitution of the United States (including the Fifteenth Amendment), yet the Democratic party pledged each of the one hundred and forty-one Democrats in the convention not to disfranchise any white man. As various members of the convention struggled with their consciences and deep-rooted convictions, almost every opinion possible was expressed about both horns of the dilemma. Many delegates condemned the Fifteenth Amendment as having been forced on the South against its will. Some wanted to petition the federal government for its repeal, but most believed it would "remain in the federal constitution until the end of time."[54] Others openly and an even larger group privately denounced the party pledge, which prevented the writing of a suffrage article providing for a select electorate based on qualifications applied equally to both races, the constitutionality of which could not be questioned.[55] Obviously, if possible, a plan must be found which the Supreme Court of the United States would find did not discriminate against the Negro on account of "race, color, or previous condition of servitude," and yet would meet the test of popular sanction on the party pledge. Fortunately for the committee, other Southern states had at least partially prepared the way.

Mississippi, one of the states that unlike Alabama kept her Radical constitution for many years, inaugurated the disfranchising movement

---

Constitution of the United States; others expressed hope that a full *verbatim* report would enlighten the people and inspire confidence. *Official Proceedings,* I, 55-74. The vote was 80 to 60 in favor of a complete record, but the opposition reopened the question on several occasions in an effort to stop the complete report. The convention later voted 91 to 40 against cancelling the contract for the verbatim record. *Ibid.,* I, 370.

[52] As one delegate said: "We stand here hedged about on the one hand by the Fifteenth Amendment to the Federal Constitution; on the other by pledges to our people." *Ibid.,* III, 3044. The convention simply ignored the proviso in the act of re-admission (1868) which declared that the Alabama Constitution could never "be so amended or changed as to deprive any citizen or class of citizens of the United States of right to vote . . . who are entitled to vote by the constitution thereof herein recognized." Fleming, *Documentary History of Reconstruction,* I, 476.

[53] Bureau of the Census, *Twelfth Census of the United States: 1900* (Washington, 1902), I, 970; Appleton's *Annual Cyclopaedia,* VI, 3rd series (1901), 665.

[54] *Official Proceedings,* I, 780, 826; Birmingham *Age-Herald,* March 21, 1901.

[55] *Official Proceedings,* II, 2722, 2729, III, 2789, 2793, 3022, 3033; Montgomery *Advertiser,* June 20, 21, 28, July 11, 12, 1901.

in 1890, followed by South Carolina in 1895 and Louisiana in 1898.[56] North Carolina adopted a new suffrage article by amendment in 1900. The franchise articles of Mississippi, South Carolina, Louisiana, and North Carolina were very similar.[57] An elector must reside in the state two years, the county one year (six months in North Carolina) and in the precinct from four months in North Carolina and South Carolina to a whole year in Mississippi. In Mississippi and South Carolina he must be able to read, or understand when read to him, any section of the state constitution; his ability to be determined by a county board of registrars. The "understanding clause" was invented by the Mississippi convention in an effort to provide a loophole for the illiterate whites.[58] Since its execution depended on partisan registration boards, it was open to serious frauds.[59] In each of the states the elector must pay a poll tax of from one to two dollars. In addition, in Mississippi the voter must have paid all back taxes for two years. In Mississippi, South Carolina, and Louisiana, those guilty of a long list of petty crimes were disfranchised. In Louisiana the elector must be able to read and write his native language or own property assessed at not less than $300.00. Because the understanding clause was subject to gross fraud, the Louisiana convention invented the "grandfather clause" as a safeguard for the white man against the educational and property requirements for the franchise.[60] It provided that all whose father or grandfather had voted prior to January 1, 1867 (the year the Negro was enfranchised) might register to vote for approximately four months after the completion of the constitution. In 1900, North Carolina imitated Louisiana in adopting the grandfather clause as a loop hole from educational qualifications, but made its life almost eight years instead of four months.[61]

On the eve, and during the early part, of the convention, Alabama newspapers reviewed the history of the disfranchising movement.[62] The property and educational tests adopted by other Southern states, it was agreed, would be constitutional,[63] but they would disfranchise many white men as well as Negroes. Every feature of the Mississippi plan or "understanding clause" invented by Mississippi as a loophole for white men was presented to the people. "It has been held to be constitutional . . .[64] [declared the Birmingham *Age-Herald*] but its application is manifestly not impartial. And it is efficient, as the history of Mississippi shows, where it has been in operation ten years. It is better than the 'grandfather clause' [not yet ruled on by the courts] which is rank caste or class rule."[65]

---

[56] It is interesting to note that the first two disfranchising constitutions (Mississippi's and South Carolina's) came in states where the Radical constitution had not been replaced and that in both cases it was inaugurated by the white counties that resented the universal manhood suffrage and whole population as a basis of representation decisions (both of which favored the black counties) of the Reconstruction period.

[57] Thorpe, *op. cit.*, III, 1563; IV, 2120; V, 2835; VI, 3310.

[58] Albert D. Kirwan, *Revolt of the Mississippi Rednecks,* 70.

[59] *Ibid.*, 71.

[60] Woodward, *op. cit.*, 334.

[61] Thorpe, *op. cit.*, V, 2835.

[62] Birmingham *Age-Herald,* February 12, 17, March 21, 22, May 16, 17, 1901; Mobile *Register,* January 4, 24, May 3, 16, 1901.

[63] Even Massachusetts and Connecticut they pointed out with some delight had educational tests for voting. Thorpe, *op. cit.*, I, 554; III, 1919.

Most of the newspapers were in agreement in their denunciation of the grandfather clause and some testified to the efficacy of the poll tax as a white as well as a Negro disfranchiser. "If the coming constitutional convention [declared one editor] desires to have a small select electorate it can reach such a result by the poll tax route . . . [as] the experience of Mississippi goes to show that the poll tax condition invites wholesale disfranchisement even in the ranks of the white voters."[66] The following figures taken from the *Congressional Record* by the Mobile *Register* gave the people evidence as to the efficiency of all plans: "In the seven districts of Mississippi, the total vote cast for all congressional candidates in 1890 was 62,652; in 1898 it was 27,045. In the seven districts of South Carolina the total vote in 1890 was 73,522 and 28,831 in 1898. In the six districts of Louisiana 74,542 in 1890 and 33,161 in 1898."[67]

The press, which was not playing to the gallery, assumed a much saner attitude toward the Negro than most of the politicians. Generally, the newspapers supported a suffrage article that would equally and without subterfuge be applied to both races alike.

> In dealing with the Negro, as related to the ballot box or the public schools or any other matter [the Birmingham *News* declared] the white men of Alabama should approach such considerations with the realization paramount in their minds that the Negro is a fixed quantity. He is as much a part of the South, as far as this and many succeeding generations are concerned, as cotton, corn, iron ore, or coal. Being here always he must be recognized as a stable component entering into the welfare or harm of the state. The whites must next realize that the Negro must be so treated that he will count for the good of the state and its progress along the best lines. To this end he must not be deprived of the ballot by any subterfuge when he meets the requirements of the suffrage laws that may be adopted. His ambition should be fired to measure up to the stipulation, but, doing that, in

[64] *Williams* v. *Mississippi*, 170 U. S. 213 (1898).

[65] Birmingham *Age-Herald*, March 22, 1901.

[66] *Ibid.*, February 12, 1901. However, the Huntsville *Mercury*, drawing on the history of the poll tax in Tennessee (effective 1890) warned the convention that the poll tax alone would not necessarily produce a select electorate because "in the first place the hunters will readily pay poll taxes for the floating voters. It would not be long after the establishment of such a policy until the campaign committees of the two parties would be calling for contributions to a fund which would pay poll taxes." Quoted in Mobile *Register*, May 28, 1901.

[67] Mobile *Register*, January 4, 1901. See also *Congressional Record*, XXXIV, 56 Cong., 2 Sess., 519.

all common decency and fairness, he must be given the meal for which he has worked and which he has honestly earned. There should be no subterfuge or play on words in the election laws enacted by the constitutional convention. It should be so plain that there should be no question as to its meaning or effect. The Alabama election law should be an improvement over the recent enactments in Mississippi, South Carolina, Louisiana, and North Carolina. It should contain what is good in these laws and eschew what is unwise.[68]

The suffrage committee met on May 29 and appointed a subcommittee to collate United States Supreme Court decisions in regard to the suffrage.[69] The suffrage provisions of the constitutions of Mississippi, South Carolina, Louisiana, and North Carolina were printed in pamphlet form for the use of the committee.[70] Also included were the franchise articles of Massachusetts, Connecticut, Maryland, Pennsylvania, California, and Utah, as each of these states placed certain restrictions upon the suffrage and were representative of different sections of the country. Members of the convention presented their ideas to the convention in the form of ordinances, which were in turn referred to the committee on suffrage and elections. There was no dearth of plans dealing with the suffrage question. Thirty-eight different ordinances and seventeen resolutions on that subject were presented to the convention and some members of the suffrage committee made their proposals directly to the committee.[71] Twenty-three of the thirty-eight ordinances were more or less complete plans for an article on the elective franchise.[72]

[68] Quoted in Mobile *Register,* May 25, 1901.

[69] *Ibid.,* May 29, 1901.

[70] *Journal of the Convention of 1901,* 35, 108; *Suffrage Provisions from the Constitutions of the States and the Constitution of the United States* (Montgomery, 1901), 1-39.

[71] For instance, R. M. Cunningham presented his plan in the Birmingham *Age-Herald,* and then to the committee of which he was a member. Birmingham *Age-Herald,* May 16, 1901. Some of the newspapers made proposals for the consideration of the convention. The *Age-Herald* wanted to write the direct primary into the constitution, then by party ruling to allow all whites only to vote in the primary. A poll tax, educational and property qualifications could be required for the regular election. This would exclude the Negro in both the primary and the election, but give the poor whites a chance to participate in choosing the Democratic nominee (tantamount to election) in the primary. The *Age-Herald* believed that the plan had the virtue of being constitutional, which is interesting in light of the fact that the Supreme Court ruled the exclusion of the Negro from the primary (so long as he was excluded by the party and not by the state) constitutional until the case of *United States* v. *Classic,* 313 U. S. 299 (1941). See *ibid.,* May 9, 11, 15, 1901.

[72] *Official Proceedings,* I, 113-452, III, 3429. Ex-Governor Oates presented a suffrage plan to the convention for Senator John Tyler Morgan, which advised the convention to provide that persons "not belonging to the white race, shall not be eligible to any office under the constitution and laws of Alabama." He argued that this provision would not violate the Constitution (a long brief accompanied the plan) and would insure white registrars who in turn would register only white voters. Even as a subterfuge to disfranchise the Negro, the proposal does not seem worthy of Morgan's intellect. Oates' own proposal provided for a board of registrars who would register all of those who had paid their poll taxes and were

During the months of May and June the committee considered and debated the various propositions submitted and reports of sub-committees. Sometimes the committee was absent from the sessions of the convention in order that it might continue work on the suffrage problem.[73] Unfortunately no record was kept of the debates in the committee and as it met in closed sessions the press was not present. It is known, however, that the committee carried on an extensive correspondence with outstanding Southern leaders, including such figures as Benjamin Tillman, Hilary A. Herbert, and the state's senators, John T. Morgan and Edmund Pettus.[74]

Fourteen of the twenty-three complete plans[75] presented to the convention to regulate the suffrage came from the Black Belt and bordering counties. Eighteen provided for a poll tax of from $1 to $4, which had to be paid months before an election. Fourteen contained a grandfather clause, but only four the understanding clause of Mississippi. All plans provided for a residence of from one to two years in the state, with less time in the county or precinct. Most of the proposals disqualified persons committing any one of a long list of petty as well as serious crimes which the Negro, and to a lesser extent the poor whites, most often committed.[76] Fourteen contained educational clauses as a part of the permanent plan of registration, but only four contained property qualifications. Only one delegate specifically proposed to "disfranchise negroes and persons of African descent in Alabama."[77]

In an effort to eliminate the Negro vote without violating the United

---

not guilty of certain disqualifying crimes. Ex-Governor Jones advised the enfranchisement of those who paid a property tax of $5 and a poll tax of $4 for schools. He would give the ballot to veterans as a class but not to their descendants. Voters, however, who could not meet the property tax qualification might be enfranchised by the majority vote of the electors in a county, provided they were recommended by the grand jury. *Ibid.,* I, 113, 134, 348.

[73] *Journal of the Convention of 1901,* 207, 230, 237, 510.

[74] Montgomery *Advertiser,* June 11, 1901. The correspondence with Morgan and Pettus, however, was carried on by a minority in the committee (including William C. Oates and Frank S. White), who were out of sympathy with a majority of the committee. *Ibid.,* July 11, 1901; *Official Proceedings,* I, 134, 1257, III, 2796.

[75] With one exception, these plans were presented in the first few days of the convention and are to be found in *Official Proceedings,* I, 113-511, III, 3429.

[76] Most of the crimes contained in the report of the suffrage committee came from an ordinance by John Fielding Burns, a Black Belt planter. The crimes he listed were those he had taken cognizance of for years in his justice of the peace court in the Burnsville district, where nearly all his cases involved Negroes. For example, among those disfranchised were persons guilty of larceny, bigamy, seduction, incest, rape, or attempt to rape, burglary, or attempt to burglarize, vagrancy, wife beating, forgery and "those who are bastards or loafers or who may be infected with any loathsome or contagious disease." *Ibid.,* I, 511; Mobile *Register,* June 30 1901; Montgomery *Advertiser,* June 12, 1901.

[77] *Official Proceedings,* I, 228. He explained that he believed the state could disfranchise the Negro if willing to pay the penalty of reduction of its representation in Congress and the Electoral College, provided for by the Fourteenth Amendment.

States Constitution, most of the proposals took advantage of certain social and economic distinctions which followed closely along racial lines. Although some of these restrictions would also disfranchise poor whites, lax or partial administration in their favor was always possible. The long residence requirements, for instance, would affect adversely the Negro, whose occupations were relatively less permanent and whose habits of life were much less stable than those of most of the whites. The poll tax, favored by practically all the proposals, was designed to take advantage of the obvious economic weakness of the Negro; to him the amount of the poll tax was a large sum; and he would, moreover, often disfranchise himself by thoughtlessly omitting to pay his poll tax at the proper time or by losing his receipt. Disfranchisement was made all the more likely (for the poor white as well as the Negro in case of the poll tax) by the fact that an elector must pay this tax six months or more in advance when the issues of the coming campaign were not even known much less appreciated. The educational qualifications, usually linked alternately with a property clause, bore more heavily on the Negroes than the whites. Although 13.6 per centum of the 232,476 male whites of voting age in Alabama in 1900 could not meet reading and writing qualifications, 59.5 per centum of the 181,345 male Negroes in the same classification could not.[78] The amount of property required in the various plans presented to the convention ranged from $300 to $500, a rather large sum considering the value of the dollar in 1900, the undervaluation of the tax assessments, and the then general poverty of the Negro and the lower class whites in the South. Many other alternatives to the property qualification were proposed. In addition to education, these included various degrees of understanding, of character, of ancestry, or of industry. The most common educational requisite was the ability to read and write the state constitution in the English language; but others, such as a knowledge of the geography of the state, its counties, rivers, and cities, were proposed.

The most popular ancestry provision presented to the Alabama convention provided that veterans of various wars and their descendants could register to vote before a definitely given date, although they could not meet the educational or property qualifications for voting.[79] The historians have styled this "the fighting grandfather clause" as contrasted with the "voting grandfather clause" of Louisiana. Although Alabama was the first state to adopt the clause, it was not the original idea of any member of the Alabama convention. Alabama newspapers, which gave the "fighting grandfather clause" full coverage before the Alabama convention met, declared that United States Senator John Warwick Daniel had proposed it for the consideration of the pending disfranchising constitutional convention of Virginia,[80] which began its sessions several weeks later than the Alabama convention but stayed in session for over a year as contrasted with a session of about three months in Alabama.[81] "The Daniel Plan of Virginia invention," when linked with an educational and property clause, produced a "union of intelligence, property and patriotism,"[82] which made it more reasonable than the "voting grandfather clause" of Louisiana origin. All ancestry proposals in the Alabama convention exempted the veterans of the Civil War and their descendants from educational and property clauses for voting; most plans exempted the veterans and their descendants of all wars beginning with the American Revolution. Most proposals limited the exemption of war veterans and their descendants to a term of years; some to a definite degree of relationship, or extended the exemption to those who had served, or whose ancestors had served in the militia before a certain time. Some of the plans, of course, were patterned after the grandfather clause of the Constitution of Louisiana, which exempted from educational or property qualifications all those and their descendants who had voted in the state before January 1, 1867;[83] various dates before 1867 when the Negro was enfranchised by the Congressional Plan of Reconstruction were proposed in the Alabama convention. Many of the suggestions showed originality of conception if not practicability. One recommendation provided for the use of special colored ballots for illiterate persons, such ballots to count only one-fourth as much as the white ballots.[84] Several proposed to admit to the suffrage a certain class of persons and then permit them to add others to the list by a majority vote of the registered electors in each town or county (a method suggestive of that used in some of the New England colonies in the colonial period)[85] or to permit the legislature to add persons to the list.[86]

---

[78] Bureau of the Census, *Twelfth Census of the United States: 1900* (Washington, 1902), I, 970.

[79] *Official Proceedings,* I, 125, 129, 247, 309, 329, 342, 349, 511. Tennent Lomax of Montgomery introduced the first ordinance which contained the "fighting grandfather clause." *Ibid.,* I, 125.

---

[80] Birmingham *Age-Herald,* January 23, 1901; Mobile *Register,* January 24, 1901.

[81] Ralph C. McDanel, "The Virginia Constitutional Convention of 1901-1902," *Johns Hopkins University Studies in Historical and Political Science,* Series XLVI, No. 3, 149.

[82] Birmingham *Age-Herald,* January 23, 1901. Although Senator Daniel was chairman of the suffrage committee in the Virginia convention, the report of the committee exempted from educational and property qualifications only veterans of various wars and not their descendants—hence was not a grandfather clause. McDanel, *op. cit.,* 39-40. Leaders in Alabama's disfranchising movement declared that the Louisiana grandfather clause was the work of Thomas Jenkins Semmes, relative of Raphael Semmes, Confederate Senator, and distinguished jurist of New Orleans. Speech of Richard C. Jones on the grandfather clause, *Official Proceedings,* III, 2881; Congressman Sidney J. Bowie, "The Grandfather Clause," Montgomery *Advertiser,* July 25, 1901. Although Semmes was one of the most important sponsors of the "voting grandfather clause" in the Louisiana convention, the plan originated with Edward T. Weeks, who was not a member of the convention. See William Alexander Mabry, The Disfranchisement of the Negro in the South, 231-237, 250, 254 (unpublished Doctoral dissertation, Duke University, 1933).

[83] *Official Proceedings,* I, 153, 208, 388, 424.

[84] *Ibid.,* I, 384, III, 2819.

Several ordinances placed before the convention favored granting the franchise to women.[87] A few delegates advocated woman suffrage on its own merits; others as a check on Negro suffrage.[88] "It would double the available white vote of the state and would not increase the Negro vote five per cent,"[89] declared R. M. Cunningham of Jefferson County. Although the suffrage committee gave woman suffrage no serious consideration, its ardent supporter, Benjamin H. Craig of Dallas County forced the issue.[90] Virginia Clay Clopton and others petitioned the convention in favor of woman suffrage and the convention reluctantly allowed Miss Frances Griffin, leading woman suffragist to speak to the body on that subject.[91] Complaining that her Negro gardener who had for many years voted for her and her household of women was going to be disfranchised, she pleaded with the convention to give women the ballot in order that they might "purify politics."[92] Although Senator Morgan through letters and a telegram to Craig went on record in favor of woman suffrage,[93] a large majority of the convention opposed an outright grant of suffrage to women whether on its own merits or as an antidote to Negro suffrage.[94] After some hours of debate, the convention decided by a vote of 65 to 46 to follow the Louisiana convention of 1898 and much earlier conventions in some other states by granting women property holders the franchise on questions of issuing municipal bonds or incurring debts.[95] However, the conservatives moved for immediate reconsideration and on the next day defeated the measure by a vote of 87 to 22—most of the Populists and a few Democrats voting with the minority.[96] J. Thomas Heflin expressed the sentiments of the majority when he dismissed the whole issue as the work of "a few cranks strolling over the state."[97]

---

[85] Albert E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America*, 303-304, 382.

[86] *Official Proceedings*, I, 114, 299. The Birmingham *Age-Herald*, January 22, 1901, pointed out that these propositions were in "substance and in fact the present Vermont suffrage plan, where only those who are citizens of the United States and who have obtained the approbation of the board of civil authority of the town in which they reside," could vote. Although not in the Vermont constitution, this restriction on the suffrage was provided for by law. Francis G. Caffey, *Suffrage Limitations at the South*, 12.

[87] *Official Proceedings*, I, 323, 606.

[88] Montgomery *Advertiser*, July 24, 1901; *Official Proceedings*, I, 606; III, 3816.

[89] Birmingham *Age-Herald*, May 16, 1901.

[90] Craig was one of few Black Belt liberals. He introduced ordinances in favor of woman suffrage, the incorporation of labor unions, and against lynching, child labor, and trusts. *Official Proceedings*, I, 319-320, 606.

[91] *Ibid.*, I, 455, 464; II, 1388. Miss Griffin, a Montgomery school teacher, deserted the class room to enlist under "the banner of Frances Willard" in 1885. Since that time she had made thousands of speeches in almost every state in the Union in favor of temperance and woman suffrage. Montgomery *Advertiser*, June 16, 1901; Lee Norcross Allen, The Woman Suffrage Movement in Alabama, 8-14 (unpublished Master's thesis, Alabama Polytechnic Institute, 1949).

[92] *Official Proceedings*, I, 464-471.

[93] Montgomery *Advertiser*, July 24, 1901.

[94] Such important leaders as Oates, Coleman, and O'Neal took the floor against woman suffrage. Woman suffrage would do violence to the "theory of Southern civilization . . . that woman was queen of the household and domestic circle," argued O'Neal. *Official Proceedings*, III, 3858. Oates told how he as a congressman had opposed the admission of Wyoming with woman suffrage. *Ibid.*, III, 3869.

After almost a month had passed and the suffrage committee had not reported, the press of the state and the delegates themselves became very impatient. Resolutions were introduced in the convention urging the committee to report.[98] Corporations, anxious lest a delayed convention would work in favor of those demanding many reforms—especially an elective and effective railroad commission—pressured the suffrage committee through their many active lobbyists in Montgomery to make a report.[99] They also brought pressure on the convention to consider the report, adopt a suffrage article, and adjourn.[100] Many editorials discussed the dilemma of the committee which had to write a suffrage article which could be ratified in regard to the no white man disfranchisement pledge and yet be constitutional. As the Mobile *Register* said, the committee must "steer the bark between the Scylla of the platform and the Charybdis of the constitution."[101] And the consensus of editorial opinion was that safe passage was impossible—the committee must take some other course. Many of the most important newspapers in the state (notably those in the Black Belt and South Alabama) advised the convention to forget the no white man disfranchisement pledge, expressing the belief that the pledge had been hurriedly and unwisely made and that public opinion had now changed.[102] Some pointed out that since the constitution would be submitted, the disfranchised white voter would have the recourse of voting against it.[103] The Alabama press association in its annual meeting in Montgomery promised the support of the press of the state (by a vote of 19 to 11) for any worthwhile suffrage article that the convention might adopt, even though the "no white man disfranchised pledge" was not honored.[104]

---

[95] *Ibid.,* III, 3823.

[96] *Ibid.,* III, 3873-74. Because they provided for limited woman suffrage one day and denied it the next, the feminine editor of the Tuscaloosa *Times* called the delegates "Indian givers." Montgomery *Advertiser,* August 17, 1901, quoting the Tuscaloosa *Times.*

[97] *Official Proceedings,* III, 3872.

[98] *Journal of the Convention of 1901,* 380, 543, 603, 683.

[99] Montgomery *Advertiser,* July 11, 12, 1901.

[100] "The railroad influence wants the suffrage report taken up right away and disposed of, in the belief that when this is done the convention will rush through all the rest of its task and do nothing the railroads oppose," declared the *Advertiser,* July 11, 1901.

[101] Mobile *Register,* July 7, 1901.

[102] *Ibid.,* June 20, 23, 1901; Montgomery *Advertiser,* June 20, 21, July 1, 1901. The *Register* said that the pledge had been "railroaded" through the Democratic convention at the last moment, and the *Advertiser* declared that "it is a notorious fact that state platforms . . . are made to catch votes rather than to enunciate principles and policies." The no white man disfranchised pledge had been introduced directly into the state convention (despite the rule requiring resolutions to be submitted to standing committees first) in March, 1899, in an effort to win over some of Johnston's followers, but it had been reaffirmed by two succeeding state conventions.

Although excluded from the committee meetings, the press secured some information as to the progress of the suffrage committee. On June 11, the Montgomery *Advertiser* reported that President Knox addressed the committee on the suffrage problem. On June 16, a reporter for the Mobile *Register* wrote that "the committee is struggling with the problem day and night." A minority of the committee opposed all subterfuges and reluctantly ceded point after point until they took a last stand against the grandfather clause.[105] On June 17, the Huntsvil *Mercury* reported that the committee was "divided on two princip suffrage plans. In other words, about one half the delegates comprisin the Suffrage Committee favor a registration plan akin to the one i Mississippi and the other half favor a 'grandfather clause' like the on in the Louisiana constitution." Finally, the committee compromised b including both plans in its report. On June 30 the suffrage committee made a majority and a minority report. In presenting the report o the majority, Coleman said that it was the product of many minds—th work of Alabamians and of information and advice secured "through an extensive correspondence with leading men of other states." "Our mai purpose [he declared] has been to eliminate the venal and incompeten from the exercise of the elective franchise and not violate any of the provisions of the Constitution of the United States."[106] The requisites fo the franchise in the permanent part of the majority report included th following:

> Residence in the state two years, county one year, and ward thr months.[107]

---

[103] "There can be no violation of the confidence of the people in a case in whi the completed constitution is to be referred for ratification to the people themselve Montgomery *Advertiser,* July 12, 1901; see also *Official Proceedings,* III, 2729, 30

[104] The Montgomery *Advertiser,* July 11, 1901, listed nine of the newspape voting with the majority as follows: Greenville *Advocate,* Clarke County *Democr* Mobile *Register,* The *Alabama Baptist,* Tuskegee *News,* Pratt City *Herald,* Mon gomery *Advertiser,* Montevallo *Sentinel,* and the Wetumpka *Herald,* only two which were North Alabama newspapers. Voting with the minority was a Popul newspaper and two "organs of labor organizations," according to the editor.

[105] *Official Proceedings,* III, 2849. William A. Handley moved the adoption the grandfather clause in the suffrage committee. D. W. McIver, "William Handley," Montgomery *Advertiser,* December 13, 1903.

[106] Majority report of the suffrage committee, *Official Proceedings,* I, 12 1264.

[107] Single spacing has been used for emphasis only; the report has been red to its bare essentials.

Each elector shall have paid on or before the first of February next preceding the date of the election at which he offers to vote, all poll taxes due from him from the year 1901 or from the year he comes of age and for each subsequent year at the rate of $1.50 per year.

All can register and vote who can read and write any article of the Constitution of the United States in the English language, and who being physically able have been regularly engaged in some lawful business or occupation for the last twelve months.

Or, anyone who owns or whose wife owns real or personal property assessed at $300 or more, or forty acres of land—the taxes on all property having been paid.

The following persons are disqualified from registering and voting: All idiots and insane persons, those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this constitution; and those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining money or property under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or any infamous crime or crime involving moral turpitude; also any person who shall be convicted as a vagrant or a tramp, or of selling or offering to sell his vote or the vote of another, or buying or offering to buy the vote of another in any election by the people or in any primary election or to procure the nomination or election of any person to any office or of suborning any witness or registrar to secure the registration of any person as an elector.

And, prior to January 1, 1903, a temporary plan of registration would be in force—under which all of the following could register to vote for life so long as they met age, residence, and poll tax requirements:

All those who were soldiers or sailors in the War of 1812, Mexican War, Civil War, War with Spain, or in any war with the Indians; or

The descendants of those who were soldiers or sailors in any of these wars and the American Revolution; or

All those of good character who understand the duties of citizenship in a republican form of government.

The minority report (signed by William C. Oates, Frank S. White, George P. Harrison, and S. H. Dent) consisted of a vigorous dissent against the "descendants clause" of the temporary plan.[108] The report, presented by ex-Governor Oates, declared that this clause "violates the Federal Constitution which we have taken an oath to support. It undertakes by indirect means to deny or abridge the right to vote to citizens of the United States on account of race, color, or previous condition of servitude, which is forbidden by the Fifteenth Amendment. . . . The clause . . . does not erect a standard of qualifications applicable alike to both races, but establishes an arbitrary standard, which considered in connection with the history of the country, confers the right of suffrage upon members of the white race (who are descendants of such soldiers) and denies it to members of the black race, who are not such descendants. . . . Aside from constitutional objections, there are other weighty reasons why this provision should not be in our constitution." Among the more important reasons listed were:

---

[108] Minority report of the suffrage committee, *Official Proceedings,* I, 1264-1266.

> It establishes a permanent, hereditary, governing class, which is undemocratic, unrepublican, and un-American. . . .
>
> It insults the white men of Alabama and proclaims their inferiority to the Negro by requiring of them as suffragans, a lower standard of capacity and intelligence than that required of the Negro.
>
> It is impracticable of administration, owing to the impossibility of establishing with any certainty, descent from remote ancestors. The field of speculation into which we are carried opens wide the doors of fraud and perjury.
>
> It is not necessary. The ballot can be secured to the honest and capable without resorting to this subterfuge.
>
> Out of respect for the opinion of thoughtful and fair minded men everywhere, we ought not to incorporate into our fundamental law this unwise and questionable scheme. It will retard the development of capital, and check the flow of immigration to our state. Alabama should take no backward step. . . .[109]

---

[109] *Ibid.*

CHAPTER XVIII

HE GREAT DEBATE: SUFFRAGE AND REPRESENTATION

Although brought before the convention on other occasions, coninuous debate on the reports of the suffrage committee began on July 23 nd lasted through August 3.[1] The debates opened with the gallery full nd "over in the south-east corner quite a large group of negroes sat hrough the proceedings," reported the Montgomery *Advertiser*.[2] The najority report was ably supported by the president of the convention, he chairman of the suffrage committee, most of the members of that ommittee, and others. The four members of the suffrage committee vho signed the minority report were joined in opposition to the grandather clause or other parts of the majority report on the floor of the onvention by Robert J. Lowe, chairman of the Democratic State Execuive Committee, ex-Governor Thomas G. Jones, and others. Six of the leven days of continuous debate on the suffrage reports were spent in ebate on the temporary plan of the majority—including the soldiers, randfather or descendants, and good character and understanding lauses. These debates disclose the complexity of the motives for the isfranchising movement not only in Alabama but throughout the South. hey reveal with equal frankness the status of the Negro in Southern ociety and various attitudes toward the Negro and the poor white—s well as a distinct sectionalism within the state which had so long been force in Alabama's history. The discussions constitute a commentary n the conscience of the South, "the central theme" of its history, and s abnegation of the Fourteenth and Fifteenth Amendments. They are testimonial to the guilt of both races as to the prevalence of fraud at he ballot box, its effect on the morals of the people, and of the desire of he majority (although many differed as to methods or temporary comromises that were necessary for ratification purposes) to restrict the uffrage to the "intelligent and the virtuous." Only in part, of course, an the debates be used within the confines of this chapter.

Again and again during the course of the convention, delegates testied to the prevalence of frauds in Alabama's election system in various parts of the state. The foreign vote was used in Birmingham to “swing” elections.[3] In the white counties most of the fraud was perpetrated in the primaries, when white men stole votes of white men.[4] In the counties bordering the Black Belt, the Negro held the balance of power and there his vote was for sale. In that section “we want to be relieved of purchasing the negroes to carry elections [said wealthy William A. Handley of Randolph County]. I want cheaper votes.”[5] But in the Black Belt the system of “voting” the eligible Negro population, many of whom never appeared at the polls, had been perfected into what delegate Charles H. Greer of that section called a “Black Belt art,” which for more than a quarter of a century had “piloted the old Democratic ship from among the breakers on divers occasions and saved her from wreckage.”[6] “Anytime it was necessary the Black Belt could put in ten fifteen, twenty, or thirty thousand negro votes” to guarantee victory for conservative Democracy, declared one delegate.[7] And according t many others, Black Belt “votes” kept the Democratic party in power during the Populist revolt of the eighteen nineties.[8] “Fraud was resorted to as being the less hurtful to the Negro [than shotguns] in the bodily sense, and upon the principle that evil might be done that good might come from it [maintained Thomas H. Watts, the son of Alabama’ Civil War governor]. The Democrats of the Black Belt have stood t their post, have been in the ballot box and counted out the negro in orde to preserve the political welfare of the whole state of Alabama. Bu Mr. President, the time has come when we are tired of it. We wan the day of honest elections to dawn in this fair state.”[9]

---

[1] See *Official Proceedings,* II, 2709-III, 3456. A caucus of Democratic deleates (called at the request of 64 delegates) refused to debate the suffrage issue a closed caucus of only the Democratic members, although J. Thomas Heflin nd others did not wish "to wash dirty party linen in public." Montgomery *Adverser,* July 13, 16, 1901.

[2] Montgomery *Advertiser,* July 24, 1901.

> For thirty years or more [declared James M. Weatherly of Birmingham the Fifteenth Amendment has been a dead letter in Alabama, made so b the courageous men who decided that the negro should no longer be a facto in Alabama affairs. They have given you this condition of affairs whe your mind is at peace. The suffrage is regulated, but by revolutiona methods. Not for a single day since 1874—yea not for a single day sin the first gun was fired at Sumter—has Alabama been free from revolutiona

---

[3] *Official Proceedings,* III, 3225, 3233.

[4] *Ibid.,* III, 3018, 3033, 3123.

[5] *Ibid.,* III, 2876-2877. During the Populist period Negro votes reached $5 a $10 each, said William A. Handley.

[6] “It is an art, gentlemen, learned only by experience, one fraught with danger a ‘magnificent system’ that cannot be inherited or perpetuated. It is an achiev ment of faith with the evidence not seen. It is Christianity, but not orthodox. is prime but humane. It is wrong but right. It is justice but injustice. It is l instead of death,” Greer told the convention. *Ibid.,* III, 3079.

[7] *Ibid.,* III, 3372.

[8] *Ibid.,* I, 1465, III, 2875, 2982, 3035, 3079, 3280, 3396. Henry F. Reese of Da County declared that “if the sheriffs of the Black Belt” had wavered in 1892, K would have been elected over Jones. “The great party of white supremacy in t country would have melted away, and a mongrel crowd would have administe the affairs of the state in Alabama.” *Ibid.,* II, 1465.

[9] *Ibid.,* III, 2982.

overnment. . . . This is not a party problem nor a party measure nor a arty question; but it is a problem for the conscience, the heart and the honsty of the people of Alabama to pass on. I stand here for white supremacy, air election laws, and freedom from the political domination of any one olitical party. . . . It has come to such a pass, nowadays, I am sorry to ay, that to be in public life is to clothe oneself with a suspicion of disonesty. And this has grown out of our political methods and is due to a urchaseable constituency. Intelligence is a fundamental principle of sufrage and with a white constituency composed of men who would vote as ey thought in the face of all opposition and in spite of all bribery, there ould be no rascality in office and no bribery to get into office. What we ave been appointed to do is to replace this revolutionary method by legal achinery, which would automatically control the negro vote without inring the white man.[10]

The proponents of the temporary plan argued that it was necessary, onstitutional, timely, and a monument to old soldiers. Also, it placed e government of the state in the hands of the white race, which had an inherent capacity to govern," they declared. However, the most nportant point that can be made about the temporary plan is that it as essentially a compromise on the suffrage problem—"the child of ecessity."[11] Despite all the talk about "white supremacy," and "the reat Anglo-Saxon race,"[12] a majority of the delegates were in Montomery to secure a select electorate based on educational and property ualifications, which would not only eliminate fraud but at the same me place the government of Alabama in the hands of the conservaves.[13] However, the only way to secure ratification of the constitution as to make concessions to the uneducated and propertyless whites for e present—many of whom as had already been proven in Mississippi

[10] Mobile *Register,* April 23, 1901. The *Register,* April 21, 1901, declared that e convention of 1901 was a "peaceful revolution, coming as a capstone of a physial revolution of twenty-seven years ago."

[11] *Official Proceedings,* III, 3207. The original idea for the soldier and grandther clauses in part at least came from New England. In 1857, Massachusetts order to secure ratification of Article XX to the Constitution of 1780 imposing literacy test found it necessary to provide that "this amendment shall not apply . . to any person who now has the right to vote, nor to any persons who shall be xty years of age or upwards at the time this amendment shall take effect." Maine aced the same provision in Article XXIX of its constitution, adopted in 1892. horpe, *op. cit.,* III, 1667, 1919; John B. Knox, "Reduction of Representation in e South," *Outlook,* LXXIX (1905), 171; Francis G. Caffey, *Suffrage Limitations the South,* 4; *Official Proceedings,* I, 12.

[12] *Official Proceedings,* II, 2719; III, 2785, 2821, 2825, 3234, 3308.

[13] *Ibid.,* III, 2915, 3024, 3038, 3056, 3174, 3194, 3312. Writing in 1905, President hn B. Knox denied that the Negro was the exclusive concern of the Alabama nvention of 1901. He declared that the convention excluded "not only a large ass of Negro voters, but quite a number of white voters," and maintained that he true philosophy of the movement was to establish restricted suffrage and to ace the power of the government in the hands of the intelligent and the virtuous." hn B. Knox, "Reduction of Representation in the South," *Outlook,* LXXIX 905), 171.

would soon be disfranchised by the poll tax. And seldom did the leaders of the conservative majority get more excited than when delegates from the white counties tried to extend the temporary plan (beyond the yea provided for) because otherwise "numbers of sons of Confederate soldier will be disfranchised."[14] They beat back every attempt to extend it once by a vote of 64 to 53 and again by a vote of 63 to 49.[15] Perhaps the best statement of the purpose of the temporary plan was made b Gregory L. Smith, corporation lawyer and member of the suffrage com mittee from Mobile. He said:

> It seems to me there is some misconception as to why we have adopte the temporary plan at all. It may be the intention of some members of th Convention to arrange a fraudulent scheme to disqualify the negro, but tha is not the view with which the committee has formed its plan. Its idea ha been to truly and in fact, elevate the basis upon which the electorate was t be put in the State of Alabama. . . . If we had introduced the permane plan in the first instance, unaided by the admission into the electorate that i granted by the temporary plan, it would have been absolutely impossibl under existing circumstances, to have adopted the Constitution. The negroe would have been disqualified to a large extent and therefore would hav voted against it. A large number of citizens who on account of the fortun of war had no opportunity to qualify under the permanent plan would hav been disfranchised, and it would have left but a small minority to vote fo any plan that we might produce. It was therefore absolutely necessary th we should make a temporary plan, that looked with tenderness to the conditio of the soldiers and their descendants and a temporary plan that would enab us to redeem the pledges that were made by the party, and to adopt wh would eventuate in a high plane of suffrage.[16]

Another member of the suffrage committee, speaking for the con servatives of the Black Belt, explained the necessity and purpose of th temporary plan as follows:

> We want to build our people up, a government should seek to elevate i people. We have put step by step good character, the soldier and the d scendant of the soldier, and then after the first day of January, 1903, w have made a broad platform—as good a qualification for suffrage as exis in the United States. . . . Taking the two systems together, the tempora and the permanent, the temporary . . . is the life boat . . . coming along f sixty days through the country, and a few more days in the large counti where they have large cities, and all soldiers, descendants of soldiers,

---

[14] *Official Proceedings,* III, 3137.

[15] *Ibid.,* III, 3052, 3116-3117, 3125, 3141. Some voted in favor of a tempora plan of short duration in order that it might accomplish its purpose before t Supreme Court could pass upon its constitutionality. *Ibid.,* III, 2882, 2936, 3203.

[16] *Ibid.,* III, 3205. Although Edgar Gardner Murphy was unsympathetic w the disfranchisers, he presents a good discussion of the necessity for the tempor plan in order to secure enough white voters for adoption of the new constituti Murphy, *Problems of the Present South,* 192-193.

ho are of good character get in on the life boat. Then the book closes and e state of Alabama says to all of her people, no more soldiers, we are king care of them, and have taken care of them; no more descendants of ldiers, because we do not want to put a premium on ignorance in our own lood, but you must come up on the question of intelligence and industry, you ust come up on the question of property, in order to take part in the conuct of this great government. . . . We have made no guarantee to unborn ges of the ballot.[17]

It was agreed that at least ninety-five per cent of those registering nder the soldiers and descendants clause would be white soldiers and eir sons, but that was attributable to the history of the country in which e white race had played so patriotic a role and was not a discrimination ased on "race, color or previous condition of servitude," the leaders r the temporary plan proclaimed.[18] "If you select the test of education, Knox said] if you select the test of ownership of property, if you select e test of patriotism, if you select the test of freedom from commission f crime, every such test, when properly applied, will exclude largely ore of one race than another. The plan which requires the payment f the poll tax as a condition of the right to vote will exclude more egroes than white men. The plan which requires the voter to have rved in the armies of the state will exclude more Negroes than white en, but such a plan, in my judgement, cannot, on that account, be said be unconstitutional."[19] Reviewing the congressional debates on the ourteenth and Fifteenth Amendments, Emmet O'Neal endeavored to ow that the temporary plan did not violate the Constitution of the nited States.[20] He opposed the views of those who would test the nstitutionality of any plan by its effect. "For with the same force of asoning you could say that an educational or property qualification posed on all alike would result in denying the great mass of negroes e right to vote, and was therefore unconstitutional,"[21] he declared. t is not true that this section denies the right of suffrage to the negro r it simply allows the lawful descendants of soldiers to vote. The son a negro soldier is embraced in this class to the same extent as the son a white soldier."[22]

Again and again speakers cited the words with which the Supreme ourt had upheld the Mississippi understanding clause to prove that any ffrage provision could not be judged by its effect. "Restrained by e Federal Constitution from discrimination against the negro race [the preme Court had said] the [Mississippi] Convention discriminated ainst its characteristics, and the offenses to which its weaker members ere prone, but nothing tangible can be deduced from this. . . . The

---

[17] *Ibid.*, III, 3039.

[18] *Ibid.*, III, 2784, 2820, 2845, 2861, 2873, 2881, 2893, 2920, 2932, 2956.

[19] *Ibid.*, III, 2924-2925.

[20] *Ibid.*, III, 2771-2778.

[21] *Ibid.*, III, 2778.

[22] *Ibid.*, III, 2783.

Constitution and laws . . . reach weak and vicious white men as wel as weak and vicious negro men."[23] Linked with the good characte and understanding clause of the temporary plan, the soldiers and descendants clauses were constitutional, many delegates contended, becaus the former was a loophole provided for the property and educationa provisions of the permanent plan through which many Negroes as wel as some whites who could not meet the soldiers and descendants clause might register.[24] Seldom distinguishing between the soldiers and descendants clauses, since they tried to use the former to bolster the latte the advocates of the temporary plan pointed out that Jefferson agree that service in the militia was a qualification for voting and that man states had exempted soldiers from suffrage restrictions which others ha to meet.[25] The Louisiana grandfather clause based on ancestry votin may be unconstitutional, argued Gregory L. Smith of Mobile, but "th validity of the clause admitting soldiers and their descendants to suffrag in this State" based on patriotism and service to one's country cann be doubted.[26] As one of their opponents charged, the advocates of th grandfather clause seldom met the issue clearly. "They have spoken i generalities. They have spoken of the greatness of our race. . . . The have spoken of the magnificent development of our State. They hav told us about reconstruction," but they have not answered constitutiona and moral questions about their suffrage plans, he protested.[27]

Much of the popularity of the soldier and grandfather clauses, "th prime purpose of . . . [which was] to get votes for the Constitution," stemmed from sentiment—an appeal to the South's history and her "lo cause." Hundreds of pages of the debates are filled with this appea After reminding the delegates that "right here, in this historic hall, fort years ago, your fathers signed the ordinance of secession, picked up the hats and walked out of the Union," Thomas L. Bulger of Tallapoo addressed the convention as follows:

> The brave men of the South laid down the plow and the hoe; they we to the battle front for what they believed to be the great underlying pri ciple of our government, and they poured out their blood like water. Th followed Lee and Jackson four long years through blood and smoke a fire from Sumter's coast where the first shot was fired to the famous app tree where Lee surrendered. Those are the men I would exempt fr the understanding clause. I would build a monument here today when t

---

[23] *Ibid.*, III, 2990. See also *ibid.*, 2791, 2915, 2964, 3095.

[24] *Ibid.*, III, 2965.

[25] *Ibid.*, III, 3024.

[26] *Ibid.*, III, 2959. Harrison, a railroad lawyer of as much renown as Smi agreed as to its popularity but differed as to its constitutionality. "You h selected a patriotic and popular clay upon which to engraft this dangerous p ciple," he said. "It appeals to the soldiers, it appeals to the country. But you down in the organic law principles of an hereditary privilege, where will you sto *Ibid.*, III, 2853.

[27] *Ibid.*, III, 2827.

[28] *Ibid.*, III, 2852, 2932, 3051.

roll is called to those heroes of the Confederacy that would last longer than time. The good women of Alabama, out yonder on Capitol Hill, hard by the cradle of the Confederacy, have erected a monument looking toward the skies, which will tell future generations of the patriotism and the heroism and the courage of the soldiers of the Confederacy. (Applause) It is built of marble and stone and steel. I would write one in the constitution and I would build it of principle and when this old historic building has passed away and when that marble and stone and steel that stands out yonder is unknown, that principle will continue to live. . . . I like the grandfather clause because it is a white man's clause. I like it because it practically permits all white men to vote, and it practically denies all negroes to vote.[29]

The sons of Confederate soldiers were illiterate because of "the fortunes of war," argued many delegates. "When the fathers were at the front in the battles of the country, the boys were at home working to support their mother and the smaller children there, and after the war, the privileges in the country districts for education were limited indeed,"[30] said one delegate. J. Thomas Heflin declared the grandfather clause "the inheritance . . . that we are asking for the sons of Confederate soldiers, those who supported their widowed mothers and schooled their sisters, and brought them up, and were themselves denied an education."[31] An opponent of the grandfather clause declared that it was insulting to the white race and asked: "Would you believe that your son, any of you, would ask special privileges in the matter of qualifying for voting as against the sons of your slave?"[32] A proponent then answered: "Insult them by saying that because your father went forth to die in glory with Sidney Johnston, or to live in immortality with Robert Lee you shall have the right to vote? They will wear that right, gentlemen of the Convention, as proud a distinction as you old men wear upon your breast the bronze badge of courage put there by the women of the South. (Applause)."[33]

In defending the soldier and descendants clauses, its friends claimed an "inherent capacity of the white race to govern," an argument which most of them later conveniently forgot in debate on the poll tax, property and educational clauses. "We cannot afford to disfranchise the ignorant or illiterate white," declared the well educated and scholarly Emmet O'Neal. "It was the illiterate and uneducated white man that fought the battle of the Confederacy. They and their descendants were educated not in books but in traditions and principles of free government. . . . The negro on the other hand has no traditions of liberty, no pride of ancestry, no environments which fit him to intelligently discharge the great duties of citizenship."[34] Another delegate, speaking for the uneducated and propertyless whites of the Wiregrass even more forcibly stated this racial dogma. "It is the intransic force and intelligence within . . . [the white man, he said] that qualifies him. He is the ripened product of thousands of years of good breeding and refinement, having to begin with the highest and best qualities given to man. The white man of America has an ancestry which alone vouchsafes his eminent fitness for the exercise of the franchise. The meanest white man in the State is within the saving clause; for, at some time, he had a worthy sire. . . ."[35] And he further declared that the soldiers and descendants clauses were necessary, since "we have some white men in our midst who have not good moral character" and cannot register under the good character and understanding clause.[36] Citing the Cullom Committee report, in which a Republican administration labeled the Hawaiians an inferior race and denied them the suffrage, President Knox declared that the same Republican administration could hardly censure Alabama for its grandfather clause, which also recognized "an inherited capacity [of the whites] for citizenship."[37]

---

[29] *Ibid.*, III, 3083.

[30] *Ibid.*, III, 2941.

[31] *Ibid.*, III, 2848. See also 3009, 3011, 3060, 3199, 3204.

[32] *Ibid.*, III, 2828.

[33] *Ibid.*, III, 3086.

[34] *Ibid.*, III, 2785.

Many times delegates made reference to contemporary national history in an effort to prove that Alabama could adopt the grandfather or other clauses with little fear of retribution from the Supreme Court or the Republican Congress. "This is not a sectional issue [protested Emmet O'Neal]. The race problem is no longer confined to the States of the South. The acquisition of the Sandwich Islands, the Phillipines Porto Rico and the control of Cuba has forced the race problems to the attention of the whole country and in the wise solution of this question we have the sympathy instead of the hostility of the North."[38] Another delegate called on the convention to recognize that America's recently acquired overseas empire had created for Alabamians "'a tide in the affairs of men, which, taken at the flood, leads on to fortune.' Let us . . . pass this measure [the grandfather clause] and carry it to the people and explain it to them from the mountains to the sea and our beloved State will be redeemed"[39] from Negro domination, frauds, and dishonesty in elections. Tennent Lomax declared that he was not afraid of intervention in favor of the Negro from the conservatively dominated Republican Supreme Court or Congress because "the still but potent voice from Wall Street that sent the flag to Porto Rico, but held up the Constitution when it undertook to follow the flag, will.[40] . . ." do the same for Alabama. Northern Republicans, some delegates perceived, were more interested in their investments in the South than they were in the Negro. And Lomax might have added that the "Supreme Court follows the election returns." Capitalistic expansion as personified in the new re-elected McKinley administration was now far more important to the Republicans than the Negro's rights under the Constitution.[41]

---

[35] *Ibid.*, III, 3052-3053.
[36] *Ibid.*, III, 3051.
[37] *Ibid.*, III, 2922.
[38] *Ibid.*, III, 2783.
[39] *Ibid.*, III, 3063.
[40] *Ibid.*, III, 3087.

Many Northern editorials copied in Alabama newspapers either condoned or at least defended the disfranchising movement in Alabama;[42] some were read to the convention. One such editorial proclaimed a "higher law of human nature" against the Constitution, with the reverse effect on the Negro's rights of the "higher law of God" doctrine of the antebellum period, but just as typical of the times. Delegate R. M. Cunningham of Birmingham read to the convention as follows from the Brooklyn (New York) *Eagle:*

> Human nature is a higher constitution than the Federal compact. White control is a better preservative of government and civilization than Constitutional amendments, which threaten to ignore or cross it. The nation, under a mixture of sentiment and of political gambling, snarled itself up in the Fifteenth and Fourteenth Amendments. But the States that were seriously involved in that snarl have extricated themselves from it, and the other States practically unaffected by the consequence of the snarl, are glad that their Southern sisters have made their escape from the complication. The next generation may or may not reconcile the technicalities of the case with the actualities of it. This generation is satisfied with the actualities of it, and is willing to take its stand by the side of human nature, of history, and of rightful race instinct, leaving to the future the removal by whatever surgery may be devised of a moribund vermiform appendix affecting suffrage and representation, which remains inoperatively attached to the 'Constitution,' not of the body politic, but of the political fabric called the Union.[43]

Most of the delegates agreed with the Brooklyn *Eagle* that the Fifteenth Amendment should be repealed, but few believed that possible. Some spoke with reason against it; others bitterly denounced it. Gregory L. Smith declared that under the Fifteenth Amendment, conditions in Alabama "for more than a quarter of a century . . . have shown to the world, that virtue and intelligence are the only security of republican institutions, and that a government which does not represent the property and ability of her States, has not stable foundation."[44] "Hasn't the Fifteenth Amendment as a matter of fact been nullified, [asked one delegate] and will . . . [the Negro] not have more rights under the article suggested by the majority report than he actually has now?"[45] Some of the Populist and Republican delegates arose to defend the Fifteenth Amendment. Napoleon Bonaparte Spears, a Populist-Republican delegate from the North Alabama white county of St. Clair (3377 whites to 712 Negroes in 1900) called the Thirteenth, Fourteenth and Fifteenth Amendments the best ever "pinned to the beautiful Goddess of Liberty . . . notwithstanding they were pinned upon her beautiful form by the bloody hands of war."[46] Whereupon, the chairman of the suffrage committee himself, who was ordinarily very discreet in mentioning the pending disfranchisement of many whites, replied that "if there were no other reason for calling this convention here, and no other reason for ratifying this constitution, it would be sufficient for me to work for it in order that so many of his [Spears'] constituents might be eliminated from the suffrage plank as to retire the gentleman entertaining those sentiments."[47] In my opinion, Coleman added, "not one of our fair women has ever been assaulted in this land but that the infamous act may be traced to the Fifteenth Amendment."[48]

---

[41] In January 1901, Congressman Oscar W. Underwood of the Birmingham district where much Northern capital had been invested, while defending the Southern disfranchising states against a pending bill to reduce their representation under the Fourteenth Amendment, asked the North to let the South work out its own race problem, "if you are in favor of upbuilding the Negro race; if you are in favor of honest governments in the Southern states; if you are willing to let us protect our homes and our property—yes, and the investments that you have brought there among us." *Congressional Record,* XXXIV, 56 Cong., 2 Sess., 557. Underwood was made chairman of the committee for the adoption of the Alabama Constitution.

[42] New York *Herald* in Birmingham *Age-Herald,* May 2, 1901; New York *Times* in Montgomery *Advertiser,* June 2, 1901; San Francisco *Chronicle* and Indianapolis *Journal* in Montgomery *Advertiser,* July 17, 1901; Pittsburgh *Post* and Boston *Journal* in Montgomery *Advertiser,* July 20, 1901.

[43] *Official Proceedings,* III, 3003; *Speech of the Honorable R. M. Cunningham in Support of the Majority Report of the Committee on the Suffrage, July 27, 1901* (Montgomery, 1901), 21. The editorial was copied in the Mobile *Register,* July 26, 1901, from the Brooklyn *Eagle.*

The opponents of the grandfather clause, nearly all of whom were Confederate soldiers,[49] denounced it as a "miserable makeshift" and called it that clause of "inheritable blood." It was a rejection of every principle for which the American Revolution had been fought, they declared.[50] "It should make the bones of the oldest Democrat [Thomas Jefferson] rattle in his grave," declared one delegate.[51] "What are we here for?" asked Robert J. Lowe of Jefferson. "Not to preserve white supremacy. White supremacy is secure in Alabama. We are here to promote fair elections," and the grandfather clause is the very repudiation of fairness.[52] Replying to those who claimed the grandfather clause was not unfair to the Negro, one delegate reminded the convention that "it is common talk everywhere that this ordinance discriminates against the negro as a race."[53] Both of the state's United States Senators, John T. Morgan and Edmund W. Pettus, opposed the grandfather clause, and Morgan wrote several letters to the convention expressing his opposition.[54] "To make blood the medium of transmitting the electoral power from father to son, is to uproot from its foundations, the whole system of democratic government, and to reinstate the system and the form of regal government," Morgan declared.[55] Ex-Governor Jones opposed the "class character" of the majority report and reminded the convention that they were dealing with a question of national interest while 75,000,000 Americans looked on, since those enfranchised by the convention were part of the great "electorate which in a degree wields and controls the destinies of this country."[56] Ex-Governor Oates pleaded for justice to the Negro and argued with great force that the grandfather clause was unconstitutional. He wanted to do openly and constitutionally what others wanted to do by subterfuge—disfranchise the incompetent of both races. "We have taken an oath here to support the Constitution of the United States, [he said] and if there is nobody to be disfranchised but negroes and we disfranchise them, how does that fit the Constitution that we have sworn to support. . . . I am for making a Constitution which will elevate the suffrage and I am for eliminating from the right to vote all those who are unfit and unqualified, and if the rule strikes a white man as well as the negro, let him go. There are some white men who have no more right and no more business to vote than a negro and not as much as some of them."[57] Since they were enfranchising soldiers and their sons as a class, Oates reminded the convention that "a good many [conscripts] that wore the grey who did not wear it very honorably. . . . A large number of them deserted."[58]

---

[44] *Official Proceedings,* III, 3092. The convention struck from the Bill of Rights the re-affirmation of the Fourteenth and Fifteenth Amendments contained in Article I, sections 2 and 38 of the Constitution 1875. *Ibid.,* I, 786-790; II, 1641-1642.

[45] *Ibid.,* III, 3026.

[46] *Ibid.,* III, 2971.

[47] *Ibid.,* III, 3097.

[48] *Ibid.*

[49] All signers of the minority report were Confederate veterans. *Ibid.,* III, 2849, 3106.

[50] *Ibid.,* III, 2826, 2828, 2831, 2985, 2931-2932.

[51] *Ibid.,* III, 2831.

[52] *Ibid.,* III, 2826. Although chairman of the Democratic State Executive Committee, Lowe freely expressed his independent views. Perhaps his opinions had been conditioned by those of his uncle, Greenback Congressman William Manning Lowe of Alabama.

One delegate asked the convention to bear in mind that Alabama's

---

[53] *Ibid.*, III, 2971.

[54] *Ibid.*, III, 2796-2797, 2826, 2925, 3073; Montgomery *Advertiser*, July 11, 1901.

[55] Letter of John T. Morgan to Frank S. White, July 6, 1901, *Official Proceedings*, III, 2863. In a letter to Oates, Morgan declared that the grandfather clause was wholly "unnecessary and . . . un-American." *Ibid.*, III, 2797. However, President Knox reduced the effectiveness of Morgan's opposition to the grandfather clause in Alabama by quoting at length from Morgan's defense in the United States Senate of the grandfather clause in Louisiana and North Carolina—especially his defense of North Carolina against the Pritchard Resolution which declared the grandfather clause "in violation of the Fourteenth and Fifteenth Amendments . . . and of a fundamental principle of our republican form of government." *Ibid.*, III, 2916-2920.

[56] *Ibid.*, III, 2886.

[57] *Ibid.*, III, 2789.

[58] *Ibid.*, III, 2797. A delegate from a North Alabama county where there were many deserters said, "I have no respect for one of these dodging granddaddy clauses, that excuses everybody because his daddy wore grey. Some of the sorriest men I ever knew wore the grey." *Ibid.*, II, 2720.

800,000 "negroes constitute at least three-fifths of the agricultural labor of this state." "A majority . . . pay their honest debts, pay their taxes, work on the public roads, and abide by the laws of the State. . . . They bear the burdens of citizenship . . . should they not be allowed to enjoy the privileges of a citizen?" he asked.[59] Opponents of the grandfather clause argued that it was an insult to the white race because it required of the son of a former slave a higher qualification for the suffrage than the son of his master.[60] Moreover, by exempting many whites from the educational qualifications and requiring them for the Negro, the convention would place a premium on ignorance for the white race and give the Negro an incentive for progress.[61] Advocates of the majority plan declared that the franchise was not a right but a privilege. Since it is a privilege, does its denial to the Negro not violate the "privileges and immunities" clause of the Fourteenth Amendment, asked one delegate with some prophetic insight.[62] As the opposition pointed out, the majority showed a lack of confidence in the constitutionality of the grandfather clause by providing that if any part of the suffrage article were declared unconstitutional, the legislature by a two-thirds vote of each house could "remedy the defect."[63]

The popularity of the grandfather clause among Alabama voters is a matter of conjecture; evidence abounds both for it and against it. Perhaps, its appeal to the poor whites of North Alabama secured many votes for the constitution.[64] It was placed in the temporary plan, according to two members of the suffrage committee, because of the fear throughout the state that white registration boards would not be fair to white men (as reported in Mississippi) in administering the good character and understanding clauses.[65] Military service and ancestry were easier to prove than good character and understanding and the former clauses would secure more votes for the constitution.[66] Newspapers in Alabama were overwhelmingly in opposition to the clause and more letters to the editor appeared against the clause in the major newspapers than in its favor. It was opposed by the four major newspapers in the state (Montgomery *Advertiser,* Mobile *Register,* Birmingham *Age-Herald,* and Birmingham *News*) and by many of the county weeklies.[67] "We all know [said one delegate] that the newspapers generally reflect the views of their constituents. With the newspapers this grandfather clause does not seem to be in high favor."[68] The newspapers and United States Senators had opposed the grandfather clause in Louisiana and North Carolina as in Alabama.[69] However, as was pointed out both in the convention and the press, once the suffrage article had been adopted in previous disfranchising conventions the newspapers had accepted the decision, the opposition had collapsed, and the suffrage article had been given almost united Democratic white support.[70] Consequently, reasoned Delegate J. N. Miller of Wilcox, the Alabama convention could ignore the criticism of the grandfather clause whether from the state's press or her two United States Senators.[71] And the large majority of the convention followed this advice when they voted 109 to 23 to table the minority report and adopted the whole temporary plan of the majority by a vote of 104 to 14.[72]

---

[59] *Ibid.*, III, 2978. He also asked the "state righters": "Do you want to pursue a course that will teach the Negro to feel that the state of Alabama is his enemy. Do you wish to pursue . . . a policy that will make the Negro look to Washington and not to Montgomery for protection?" *Ibid.*, 2979.

[60] *Ibid.*, III, 2810, 2828, 2833, 2839; Montgomery *Advertiser*, June 18, 22, 23, 1901.

[61] *Official Proceedings*, III, 3039; Montgomery *Advertiser*, May 25, June 2, 1901.

[62] *Official Proceedings*, III, 2969.

[63] *Ibid.*, I, 1264, III, 2865, 3046, 3074. Frank S. White maintained: "By this section they prophesy its early death. They have made a shroud of its swaddling clothes, have made the song of its birth its funeral dirge." *Ibid.*, III, 2865.

[64] The Attala *Mirror*, a North Alabama hill county weekly, said: "We are satisfied with the grandfather clause, in as much as most white men can vote under it and the Negro cannot. . . . The convention has redeemed itself and the grandfather clause alone repays the expense of the convention. It is worth a million dollars to Alabama." Montgomery *Advertiser*, August 10, 1901, quoting the Attala *Mirror*. The Ashville *Aegis*, another such newspaper said that those who had opposed means to prevent white disfranchisement wished to see "the convention rape the law that gave it life." Quoted in Montgomery *Advertiser*, August 4, 1901. On the other hand a Confederate soldier wrote the Montgomery *Advertiser*: "I have recently interviewed one hundred voters in Pickens and Lamar counties; farmers, lawyers, merchants, doctors and school teachers. In the list are 68 old soldiers, and 64 of them are decidedly against voting by inheritance. 92 of the 100 oppose it." Montgomery *Advertiser*, July 3, 1901.

Republicans and Populists joined opposition Democrats in denouncing the plan of the majority.[73] Most of them favored the continuance of universal manhood suffrage. They generally opposed the grandfather clause but centered their opposition on the registration plan which they said was a scheme not only to disfranchise all Negroes but all whites except Democrats.[74] And some Democrats asked whether under the plan "white men would be fair to white men."[75] The majority plan provided for the appointment by the governor, the auditor, and the commissioner of agriculture and industries (or a majority of them) of a registration board of "three reputable and suitable persons" in each county of the state for registration under the temporary plan.[76] The legislature would provide for registration after the permanent plan became effective on January 1, 1903. Since registration during Reconstruction, a prejudice had existed in the state against registration boards which was now re-awakened by the prospects of an arbitrary board passing on such an intangible qualification as those "of good character . . . who understand the duties of citizenship in a republican form of government."[77] No provision was made for a Populist or Republican representative on the registration boards and the convention voted down amendments to that effect.[78] Newman H. Freeman, Republican of Winston County, predicted that "when this partisan board of registration is appointed by a partisan party, the common people of Alabama had just as well say, 'Oh King, where is thy crown?' for it will be equal to monarchial government and we will be subjects at their hands for disposal."[79]

---

[65] *Official Proceedings,* III, 2958, 3033.

[66] *Ibid.*

[67] Montgomery *Advertiser,* May 23, June 12, 22 (quoting the Birmingham *News*), 23, 27, July 12, 16, 23, 1901; Mobile *Register,* June 20, July 2, 3, 9 (quoting the Birmingham *Age-Herald*), 1901. The Birmingham *Ledger* expressed its opinion as follows: "That grandfather clause is a stumbling block to many. The *Ledger* looks on it largely as a lecture to Confederate soldiers and their sons who have not pride enough to learn to read. Any man who will march up to the polls and confess himself so indifferent to the progress of the age as not to care to read should be laughed back to the woods." Quoted in Montgomery *Advertiser,* July 31, 1901.

[68] *Official Proceedings,* III, 3281.

[69] Bowie, "The Grandfather Clause," Montgomery *Advertiser,* July 25, 1901; Woodward, *op. cit.,* 340-341. "While we regret . . . that in the suffrage plan we have not the support of either of our Senators, we remember that those who battled with these difficulties in Louisiana and North Carolina were in like condition," declared John B. Knox. *Official Proceedings,* III, 2923.

[70] *Ibid.,* III, 3041; Montgomery *Advertiser,* July 25, 1901.

[71] *Official Proceedings,* III, 3041.

[72] *Journal of the Convention of 1901,* 992, 999. The minority was composed of eight Democrats (including ex-Governors Oates and Jones, Lowe, White and Harrison), six Republicans and Populists. The other Republicans or Populists were absent or not voting.

[73] *Official Proceedings,* III, 2967, 2978, 3015, 3277-3284.

North Alabama Democrats, Populists, and Republicans charged that the registration plan was a scheme under which the Black Belt would again register and use its large Negro electorate. "Judging from the election returns from Dallas, Lowndes, Hale, Greene and other black belt counties, [said one North Alabama Populist] the Democratic party has nothing whatever to gain from the disfranchisement of the negro. Such disfranchisement would be beneficial alone to the parties in opposition to the dominant party in this State. We are all familiar with the fact that it was the large majorities from the black belt that have kept the Democratic party in power in this State." And they "have no idea of giving up this great political power," he added.[80] North Alabama's Robert J. Lowe, chairman of the Democratic State Executive Committee, charged that the registration plan of the majority permits the Black Belt to engage in "the most infamous frauds that have even been planned in Alabama."[81] A long debate ensued in which one Black Belt delegate after another testified to that section's sincere desire to be relieved of its large Negro electorate.[82] Some were more convincing than others. Delegate Gesner Williams of Marengo declared that even though "the black belt registered and voted" the Negro it would still be in "the best interest of the State"[83]—an attitude which explained in no small part North Alabama's concern over Black Belt intentions. Several North Alabama delegates maintained that the convention had been assembled only "because of a majority counted for the call in the Black Belt."[84] One delegate introduced an ordinance providing for the submission of the new constitution to the white voters alone, because "the chances are that this proposed Constitution will be defeated if submitted alone to the white voters of the State." "It is enough to disfranchise the negro without making him an involuntary party to his own disfranchisement [he declared]. We should not call upon him in the Black Belt to be the victim of a ballot he never cast. . . . And this Constitution, if adopted at all, should be adopted by unquestioned and unsoiled methods."[85]

---

[74] J. B. Sloan, Republican from Blount County, denounced the registration board of three members as "a modern Caesar" and asked that the Republican party be given a "share in the trinity." *Ibid.*, III, 3315. Napoleon Bonaparte Spears, Populist, called the board "a hideous monster." *Ibid.*, III, 2971.

[75] Montgomery *Advertiser,* July 12, 1901.

[76] *Official Proceedings,* I, 1260-1262.

[77] *Ibid.*, I, 1259.

[78] *Ibid.*, III, 3286-3291, 3314-3317.

[79] *Ibid.*, III, 2810.

[80] *Ibid.*, III, 3279-3280.

Despite the fact that a large majority of the convention favored educational and property qualifications for voting, voices were raised against those features of the permanent plan. "I know I am up against a shell game," said one delegate, "and it will do no good, but I am here to speak my protest against a property and educational qualification."[86] More than one delegate reminded the convention that "property and educational qualifications" for voting had never existed before in the history of the state. "It is a radical departure from our time honored customs [declared Michael Sollie of the Wiregrass]; and when it is introduced . . . it will not find a hearty welcome."[87] Thomas L. Long of a North Alabama hill county where many crops were made "without horse or man, by white women and oxen" declared that in his section "not one in ten" could qualify under the $300 property test.[88] "In some of the rural districts of which I know," another delegate said, "three out of five of the boys to come of age [after January 1, 1903] will probably not be able to vote under the provision. They will not have the property or the education required."[89] "Why is it necessary to separate the two and say a man must be either worth $300 in personal property or real estate?" protested another North Alabama delegate. "I have taken particular pains to examine the taxbooks in the beat in which I reside. We have 240 white voters in my beat and there is not but one man . . . with an assessment of $300 of personal property, except merchants and men in business, and I believe it may be found so all over North Alabama."[90] In answer to all critics of property and educational qualifications, the chairman of the suffrage committee as usual raised the issue of Negro suffrage. "Strike out that section and there is not a negro in Alabama that will not vote," he said. "The purpose is to enable those who should exercise the franchise to exercise it."[91] But another Black Belt delegate defended the qualifications on their merits. "Men who have come into control of property are more conservative and intelligent as a class . . . [he said, and] the young man who has put forth energy and skill sufficient to have a capacity to read and write . . . has the sense of responsibility which will insure a reasonable exercise of the elective franchise."[92]

---

[81] *Ibid.*, III, 2828, 3120.

[82] *Ibid.*, III, 2994, 3035, 3079, 3086.

[83] *Ibid.*, III, 2838.

[84] *Ibid.*, III, 3278; IV, 4782-4784.

[85] *Ibid.*, IV, 4782. A Black Belt opponent of the grandfather clause and registration plan of the majority declared that this constitution "cannot be ratified except by the aid of the Black Belt of Alabama. There is no other chance to breathe life into it and it is . . . the men of the Black Belt who are asking relief from political fraud that are to be sent home to perpetrate the most outrageous fraud in all the history of fraud." *Ibid.*, III, 3434.

[86] *Ibid.*, III, 3267.

[87] *Ibid.*, III, 3202.

[88] *Ibid.*, III, 3137.

[89] *Ibid.*, III, 3202.

Although one was able to meet the educational qualification under the permanent plan, unless physically disabled he must have also been "regularly" employed during the last twelve months in order to register to vote.[93] Thomas L. Long, who represented a North Alabama coal mining county where strikes and seasonal unemployment were not unusual, led the opposition to this so-called "employment clause." Already, in this singularly complicated suffrage article "we have quite enough traps set to catch all the negroes in Africa or anywhere else," he declared.[94] Coleman explained that the clause was intended "to exclude persons who may under our system have become to some extent educated," yet remain thriftless and incompetent.[95] After some debate the convention amended the "employment clause" to read "the greater part of twelve months."[96]

Although there was opposition to the poll tax provision of the permanent plan, it did not provoke the bitter opposition that might have

[90] *Ibid.*, IV, 4793.

[91] *Ibid.*, III, 3198. In 1946, Alabama adopted the Boswell Amendment by a vote of 89,925 to 77,264 striking from the constitution the property and educational qualifications of 1901 and substituting a literacy test alone which gave much greater discretionary powers to the registrars. The amendment was a victory for the conservatives, who frankly stated that because of changing conditions—especially higher property evaluation—these clauses no longer served their purpose. Under the new test the prospective voter could be called on not only "to read and write any article of the Constitution of the United States in the English language" as in the old, but in addition "to understand and explain" any such article. The "good character" qualification, originally a part of the temporary plan only, was now made a part of the permanent plan of registration. Birmingham *News,* November 7, 1946; Dudley O. McGovney, *The American Suffrage Medley* (Chicago, 1949), 129.

[92] *Official Proceedings,* III, 3172.

[93] *Ibid.,* I, 1259.

[94] *Ibid.,* III, 3170. "You have a seine sweeping every one of them, even the little minnows cannot get through it,"declared another delegate. *Ibid.,* III, 3182.

[95] *Ibid.,* III, 3173-3174.

[96] *Ibid.,* III, 3193, 3257, 3272.

been expected. Its effectiveness as a white as well as a Negro disfranchiser had already been proven in the two bordering states of Mississippi and Georgia—only the former of which had held a disfranchising convention. After returning from Mississippi where he talked with President S. S. Calhoon of the Mississippi convention of 1890 and other leaders, Black Belt delegate Henry F. Reese reported to the convention that they told me that it was this non-compulsory poll tax "provision regulating the payment of the poll tax at a particular time" that did more than anything else to give Mississippi a competent electorate.[97] And the requirement in the Georgia Constitution of 1877 that any elector "shall have paid all taxes,"[98] which by law included a poll tax, was one of the reasons Georgia could delay her disfranchising amendment until 1908. In fact because the poll tax was a pre-requisite for voting in Georgia, the average vote for each congressman in that state in 1902 and 1904 was even less than in some of the states which had had disfranchising conventions.[99] All these facts had been presented in Alabama's press and public forum,[100] although perhaps not as thoroughly as they might have been for fear of turning hillbillies and former Populists against the whole proposal. Yet, a considerable number of North Alabama and Wiregrass delegates were in favor of striking from the suffrage article the property, educational, and employment sections and leaving the poll tax. "If any are to be disfranchised, let them disfranchise themselves" by not paying a poll tax for public schools, they reasoned.[101]

In 1901, the attitude of many Alabamians toward the poll tax stemmed from the background of poll tax history in the state. A poll tax, which was levied by statute before the Civil War,[102] was in January, 1867 assigned by law to the upkeep of the insane hospital at Tuscaloosa.[103] The Radical convention placed a poll tax of $1.50 in the Constitution of 1868 and assigned it to public schools.[104] However, it was not made a pre-requisite for voting. Although a compulsory tax, it proved impossible of collection when one had little for the state to attach, and many thousands of Negroes and poor whites failed to pay it under the Constitutions of 1868 and 1875.[105] Its payment not having been enforced, it became something of a "joker" to many whites and Negroes. Moreover the grandfather clause and other registration tests secured so much popular attention as to overshadow the accompanying movement for a poll tax pre-requisite for voting. Also, by 1901 the poll tax had become associated in the public mind with the developing public school system, in general more popular in North Alabama than in any other section of the state.[106] These conditions and perhaps a lack of understanding of the full import of the tax when made a pre-requisite for voting, lessened opposition to it.

---

[97] *Ibid.*, III, 3386. For a discussion of the poll tax in the South, see Frank B. Williams, "The Poll Tax as a Suffrage Requirement in the South, 1870-1901," *Journal of Southern History*, XVIII (November, 1952), 467-496.

[98] Thorpe, *op. cit.*, II, 845; Albert B. Saye, *A Constitutional History of Georgia, 1732-1945*, 284-288.

[99] Caffey, *op. cit.*, 8; *Congressional Record*, XL, 59 Cong., 1 Sess., 3885.

[100] For instance, the Birmingham *Age-Herald*, May 19, 1901, maintained that the poll tax would "confine the electorate to the more conservative and intelligent portion of the population," as already proven in "three other cotton states." If "a poll tax paid at least a year previous [in Mississippi, Louisiana, Georgia, and Tennessee] is ample for all suffrage reform purposes, why should it not be ample in Alabama?" asked the *Age-Herald*, June 6, 1901. As for the Negro, the Ashville *Southern Aegis* declared: "The Negro nine times out of ten votes because it is a free right conferred on him. If he has to pay $2 to get the right to vote the free part will drop out and so will the Negro." Quoted in Birmingham *Age-Herald*, May 11, 1901.

[101] *Official Proceedings*, III, 3018, 3267, 3376, 3390; Birmingham *Age-Herald*, May 8, 1901.

[102] In 1834, a poll tax was levied on slaves, free Negroes, mulattoes, and white males of 21 to 45 years. C. C. Clay, *Digest of the Laws of the State of Alabama* (Tuscaloosa, 1843), 559.

The poll tax was now made a requirement for voting, accumulative from the year it first became due, and non-compulsory as a tax. Ample effectiveness was expected of both of the latter features in regard to the "very class of voters that we want to get rid of—the vicious voter" of both races. "We want that poll tax to pile up so high that he will never be able to vote again," declared one delegate. "If you provide a compulsory way of collecting that tax you destroy the objects and purposes of the Committee."[107] And under the majority plan as adopted the poll tax might "pile up" at the rate of $1.50 a year from 21 to 45 years of age, which then made the price of the ballot in Alabama $36.00.[108] For more than one reason payment was made necessary before February 1 of the election year, nine months before the regular election. It would discourage payment from the slothful, provide time for loss of receipt from the careless, and make less likely the payment of poll taxes by the candidates or other interested parties for the voter.[109]

---

[103] A. J. Walker, *Revised Code of Alabama* (Montgomery, 1867), 286.

[104] Article IX, section I.

[105] Montgomery *Advertiser,* August 29, 1901. The state collected $156,043 from the poll tax during the fiscal year 1900-1901, considerably less than half of the amount due. Stephen B. Weeks, *History of Public School Education in Alabama,* 199.

[106] Thomas L. Bulger of the white county of Tallapoosa declared: "What we would like to do in this country more than any other two things, would be to disfranchise the darkeys and educate white children." *Official Proceedings,* III, 3377.

[107] *Ibid.,* III, 3381.

[108] On December 15, 1953, a constitutional amendment was adopted which made the poll tax accumulative in Alabama for "the two calendar years next preceding" the date of election at which the elector offers to vote, the maximum amount thus being $3.00. Birmingham *News,* December 17, 1953. As a result of this amendment more than 200,000 new voters registered, swelling the state's registered electorate from 608,057 to 810,026. Some 130,000 of these new voters came from the 34 northernmost counties of the state and only 72,000 from 33 southern counties. *Ibid.,* April 7, 1954.

The great controversy over the poll tax resulted from an attempt of the Black Belt to make the age span of payment 21 to 60 years instead of 21 to 45 years, which it had always been.[110] Before a called meeting of the suffrage committee "every delegate from the Black Belt in the Committee" testified that the extension of the age limit "was absolutely essential to the preservation of white supremacy in that portion of Alabama."[111] As a result the suffrage committee changed its report in favor of the extension to 60 years[112] and long and bitter debate ensued. North Alabama delegates argued that to raise the age to sixty years would lose "hundreds and thousands" of votes for the constitution in that section.[113] "There are a great many poor people . . . all over the white counties that have not $1.50 at the end of the year, but come out in debt," declared one delegate. "Rather than pay $1.50 [they] would surrender their vote."[114] "It has been stated upon this floor that it is not a tax, because it is voluntary," protested Thomas L. Long of Walker. "What is the result; the forfeiture of the right of franchise. It is one of the worst sort of taxes."[115]

However, even on the issue of the extension of the age span for the poll tax the white counties did not present a united front. J. B. Graham of Talladega County appealed to the convention to "get rid of the negro after 45 years of age; help the white counties with a poll tax fund for public schools. These are two principles that rise above everything else."[116] Emmet O'Neal of the Tennessee Valley declared that "the people of North Alabama are not opposed to this provision. . . . When you go before the people of Alabama and tell them this is a voluntary contribution for the schools of the State, I tell you that no provision in your Constitution will be more popular."[117] Because of the preponderance of Negroes in the Black Belt, some counties in that section contained more literate Negroes than literate whites.[118] Since they could register under the literacy qualification, the Black Belt appealed for the poll tax in order to preserve "white supremacy." "Here you are constructing a plan by which the Black Belt will live or die," Henry F. Reese declared. "I have no confidence in the proposition that is made here by the Suffrage Committee, except the poll tax provision. That is the safest. This other is experimental. . . . We cannot surrender ourselves to the negroes for the purpose of allowing a few thriftless men in North Alabama to vote."[119] After several votes indicated that those who wanted the extension of the poll tax to 60 years of age had a bare majority, the convention compromised the matter by adopting the 45 years of age limit, but providing that if necessary the legislature could extend it to 60 years.[120]

---

[109] *Official Proceedings,* III, 3374, 3376, 3386; Birmingham *Age-Herald,* May 5, 1901; Montgomery *Advertiser,* June 5, 1901.

[110] *Official Proceedings,* III, 3356-3402. See also Frank B. Williams, "The Poll Tax as a Suffrage Requirement in the South, 1870-1901," *Journal of Southern History,* XVIII (November, 1952), 492.

[111] *Ibid.,* III, 3363.

[112] *Ibid.,* III, 3356.

[113] *Ibid.,* III, 3335.

[114] *Ibid.,* III, 3397.

[115] *Ibid.,* III, 3378.

[116] *Ibid.,* III, 3390. Graham declared that he had collected the poll tax for years in one of the larger counties of the state and had "never heard any citizen complain at the payment of the poll tax, except negro laborers whose wages were garnished for the purpose of collecting their poll tax." *Ibid.,* 3389.

[117] *Ibid.,* III, 3363.

[118] For instance, Dallas County contained 2288 literate male whites over 21 years and 3,184 literate male Negroes over the same age and Greene County 807 whites to 1,264 Negroes in the same category. Literate Negroes also exceeded literate whites in Bullock, Lowndes, Macon, Perry, and Wilcox counties. Bureau

Denied representation in the convention, the Negroes resorted to petitions. The first of four petitions was signed by Booker T. Washington and fourteen other prominent Negroes in the state, including educators, businessmen, politicians, bankers and physicians.[121] Although there was some objection to the petition, an overwhelming majority of the convention received it respectfully. Washington "is the most noted man of his race in the State, and perhaps in the South, and . . . as we are considering a question in which he and his race are vitally interested, I for one would be pleased to hear it read,"[122] declared the chairman of the suffrage committee. Because humility was considered the best policy, the petition somewhat humbly pleaded for justice to the Negro. Since the Negro "is taxed, works the roads, is punished for crime, is called upon to defend his country," the petition asked for "some humble share" for that race "in choosing those who shall rule over him." But the petitioners knew that the disfranchisement of a large majority of the Negroes in Alabama was inevitable. Their real intent was to combat a strong movement in the convention to assign taxes paid by each race to the schools of that race—a policy by which Negro schools would "be virtually blotted out." "While the amount of direct taxes paid by the negro is small," maintained the petitioners, "all will acknowledge that he is a large factor in enabling some one else to pay taxes for the negro who rents a farm or a house not only pays the rent, but indirectly, the taxes also." "Let the Negro feel that no matter how intelligent or useful he makes himself, there is no hope of reward held out before him, [continued the petition] and there will be danger that he will become a beast, revelling in crime and a body of death about the neck of the State.

---

of the Census, *Twelfth Census of the United States,* 1900 (Washington, 1902), I, 970; *Official Proceedings,* III, 3362.

[119] *Official Proceedings,* III, 3333.

[120] *Ibid.,* III, 3382, 3402, 3443-3444.

[121] *Ibid.,* I, 189-192; Bond, *op. cit.,* 169.

[122] *Official Proceedings,* I, 188.

In a thousand ways, the ignorant, shiftless, criminal negro will retard the progress of the white race."[123]

Other petitions received by the convention from Negroes were from A. F. Owens, school principal and minister of Mobile; Willis Sterrs, physician of Huntsville; and William H. T. Holtzclaw, principal of a Negro school in the Black Belt.[124] All of these petitions were well written and argued with force for justice to the Negro. All showed great concern lest Negro education be curtailed. Several pointed to the great value of Negro labor and asked economic opportunity for the Negro. Some fear existed in the state that the disfranchisement of the Negro would disturb labor conditions. In protest against their disfranchisement a state-wide meeting of Negroes at Camp Hill, Alabama, formed the Afro-American Exodus Union to supervise and finance a return to their native land.[125] And the Washington petition to the convention reminded that body that the "emigration agents and exodus associations" were hard at work seeking migrants "in the cotton raising . . . and mining districts."[126] Although the Birmingham *News* called these threats of departure to Africa, Mexico, or other sections of the United States "the veriest nonsense,"[127] letters to Alabama editors showed concern. "Those who are clamoring to take the place of the negro at the ballot box may have to take his place in the cotton patch,"[128] said one letter. The Holtzclaw petition appealed to the employing class by contrasting Negro labor favorably with white labor of other sections as follows: "And if you of the dominant race will be generous in your dealings with us, generous in the matter of education, you will ever have at your door a people who will not trouble your sleep with dynamite nor your waking hours with strikes. This is the people that appeal to you today to make a suffrage law (though the test be the severest that is consistent with reason) that will operate for all men alike."[129]

In placing emphasis on Negro education and economic opportunity rather than Negro suffrage, these petitions reflected the influence of Alabama's two most important Negro leaders—Booker T. Washington and William H. Council.[130] As one historian has pointed out, Washington helped pave the way for Negro disfranchisement in so far as his Atlanta pronouncement in 1895 and later speeches and leadership constituted a renunciation of active political aspirations for the Negro.[131] And Alabama disfranchisers cited Council's annual address to his students in October, 1900, as evidence that Negro leaders acquiesced in the disfranchisement of most of their race. "As our footsteps diverge from political walks, they approach industrial success and true citizenship," Council declared. "The Negro will grow in usefulness in proportion to his contribution to industrial development and not political strife."[132]

---

[123] *Ibid.*, I, 191. Max Bennett Thrasher, correspondent of the New York *Evening Post* in Montgomery, wrote his newspaper that the Washington petition "had the effect of making more delegates conservative" on the Negro issue. Montgomery *Advertiser*, June 16, 1901.

[124] *Official Proceedings*, I, 430-431, 652-654, II, 2069-2071; Bond, *op. cit.*, 170.

[125] Mobile *Register*, May 12, 1901.

[126] *Official Proceedings*, I, 190.

[127] Quoted in Montgomery *Advertiser*, September 1, 1901. For an unsuccessful experiment in Negro colonization in Mexico in this period, see A. W. Reynolds, "The Alabama Negro Colony in Mexico, 1894-1896," *The Alabama Review*, V (1952-1953), 243-268, VI (1953-1954), 31-58.

[128] Montgomery *Advertiser*, June 27, 1901.

[129] *Official Proceedings*, II, 2071.

[130] Council, born in North Carolina, July 12, 1848, of slave parents, was a Negro lawyer, politician, and educator, who since 1875 had been president of the land grant

The delegates who made the more moderate speeches in regard to the Negro in the course of debate included the older Black Belt leaders, the Populists, and "black and tan" Republicans. A "lily white" Republican from the hill county of Winston would disfranchise as many Negroes as any Democrat in the convention.[133] However, the Populists and Republicans spoke in terms of abstract justice and right and their speeches seemed to lack the deep sincerity of the ex-slaveholding Black Belt patrician. The older Black Belt leaders, notably ex-Governors Jones and Oates (both of whom had fought the Populists and significantly had received the bulk of the Negro vote in 1892 and 1894 respectively) made the most effective defense of the Negro's rights. The two former governors were both very conservative in their economic and social philosophy, but spoke in the Wade Hampton tradition of paternalism toward the Negro.[134] Each forcibly defended Negro education, suffrage for the intelligent and thrifty Negro, and took advanced ground against lynching. "The negro race is under us," declared ex-Governor Jones. "He is in our power. We are his custodians. . . . We should extend to him, as far as possible, all the civil rights that will fit him to be a decent and self-respecting, law abiding and intelligent citizen of this state. . . . He is a part of our economic system. We come in contact with him everywhere. If we do not lift them up, they will drag us down."[135] Some whites outside the convention also raised their voices in favor of justice to the Negro. In "An Open Letter to the Constitutional Convention of Alabama," Edgar Gardner Murphy, pastor of the St. John's Episcopal Church in Montgomery, warned the convention that "the imposition of

---

Agricultural and Mechanical College for Negroes at Huntsville, of which he was founder and organizer. Owen, *op. cit.*, III, 406; Bond, *op. cit.*, 169.

[131] Woodward, *op. cit.*, 323. "Council and Washington are credited with having agreed that the franchise is worth nothing to their race, and they would be better off without it," declared the Troy *Messenger*. Quoted in Birmingham *Age-Herald,* April 4, 1901. For an early denunciation of Washington for this position by another Negro leader, see W. E. B. DuBois, *The Negro,* 226.

[132] Mobile *Register,* January 27, 1901, quoting from Council's address.

[133] *Official Proceedings,* III, 2812; *Mobile Register,* July 25, 1901.

[134] Hampton M. Jarrell, *Wade Hampton and the Negro: The Road not Taken,* 119-124; Woodward, *Origins of the New South, 1877-1913,* 339.

[135] *Official Proceedings,* IV, 4303.

a suffrage test for the negro without the application of the same test to the white man. . . . will serve, permanently, to injure the stronger race rather than the weaker."[136]

On the other hand the most bitter anti-Negro delegates were younger men (who had known only the freedmen) from the Black Belt and bordering counties, and delegates from counties where the new industrialism had brought an influx of Negroes, creating an antagonism between white and Negro laborers and demands from employers for controlled Negro labor. No one spoke with more acridness than the delegate from the Black Belt County of Marengo. "We of the younger generation, we have known but one slavery, and that—slaves to the negro vote," Gesner Williams declared. He thought no Negro the equal of "the least, poorest, lowest-down white man I ever knew."[137] In the advent of a race war, he asked, would you not "want the lowliest white man that plows the cotton row in South Alabama or the corn row in North Alabama . . . to shoulder the musket and go out against the black?"[138] Thomas L. Long of Walker County, the scene of recent labor troubles between white and Negro miners,[139] was "opposed to the enfranchisement of any negro in the State of Alabama. Let it be Booker Washington or any one else."[140] And the rising politician J. Thomas Heflin of the textile-mill county of Chambers, where the Negro vote was considerable, also spoke the extreme racial doctrine of the new era. "I believe as truly as I believe that I am standing here, that God almighty intended the negro to be the servant of the white man," declared Heflin. He favored giving to Negro schools only the tax money paid by the Negro race. "Some day the clash [between the races] will come . . . and I do not believe it is incumbent upon us to lift him up and educate him and put him on an equal footing that he may be armed and equipped when the combat comes,"[141] he maintained. In many ways the early twentieth century in Alabama and Southern politics "belonged neither to the fallen Populists nor to the old Jones-Oates type of patrician—but to the Heflins."[142]

The convention made few alterations in the majority report of the suffrage committee. After some debate the convention changed the majority report in order to enfranchise foreigners who had declared their intention to become citizens before the adoption of the constitution, lest several thousand foreign laborers in the Birmingham area who could vote under the Constitution of 1875 vote against the new constitution.[143] Instead of allowing the legislature to "remedy the defect" if any part of the suffrage article were declared unconstitutional, the convention provided that if any part were declared unconstitutional "the residue of this article shall not be thereby invalidated or affected."[144] After these and several other minor changes, the convention adopted the whole suffrage article by a vote of 95 to 19.[145] Thirty-six Democratic delegates and three Republicans and Populists were absent or not voting. The minority included those Democrats who had bitterly opposed the grandfather clause. All eleven Republicans and Populists present voted against the whole article. Ex-Governor Oates attempted in vain to have the convention provide for a separate popular vote on the grandfather clause and the constitution.[146]

---

[136] "An Open Letter to the Constitutional Convention of Alabama," printed in Edgar Gardner Murphy, *Problems of the Present South,* 194-197. A discussion of the letter is contained in "Disfranchisement in Alabama," *Outlook,* LXVIII (May 4, 1901), 1-2. For an answer to Murphy, see C. P. Rogers, "An Open Letter to a Minister," Mobile *Register,* May 22, 1901. Another important Alabamian, J. L. M. Curry declared that "the elective franchise belongs only to the best [of both races] and no man who cannot read his ballot should be allowed to cast it." *Ibid.,* May 11, 1901.

[137] *Official Proceedings,* III, 2837.

[138] *Ibid.,* III, 2840.

[139] Bond, *op. cit.,* 168.

[140] *Official Proceedings,* II, 2719.

[141] *Ibid.,* III, 2841, IV, 4303.

[142] Woodward, *op. cit.,* 340.

The suffrage article adopted by the convention was the most intricate article on the elective franchise adopted up to that time by any Southern state. Its temporary plan contained the good character clause, the understanding clause and registration plan of the Mississippi Constitution, and the newly invented soldier and fighting grandfather clauses. In its permanent plan were educational, property, and employment qualifications as well as the disfranchising crimes section and the poll tax, which had been used in many states in order to secure a select electorate. One historian has declared that in 1901 Alabama "drew up in convention and established in her constitution the most elaborate suffrage requirements that have ever been in force in the United States. They accomplished all that Mississippi, South Carolina and Louisiana had accomplished and even more."[147]

Closely related to the suffrage issue was that of representation. Reuben Chapman of Sumter County told the delegates "that the Black Belt has come to this convention bearing a gift, an unusual gift . . . the power it has heretofore held and heretofore used." Because of the disfranchisement of the Negro, he said, "we are turning over to you majorities . . . ranging anywhere from 25,000 to 50,000 votes."[148] However, the Black Belt was not disfranchising its Negro population and "turning over" this power without a price. The whole population must remain the basis of representation in the state legislature and South Alabama must be given a guarantee that this basis could never be changed by the amending process.[149] On the matter of existing apportionment, which failed to recognize the great shift in population toward the industrial centers of North Alabama, the Black Belt offered the white counties a compromise. Five additional representatives and two new senators were provided for and given to the white counties.[150] However, this concession by no means abolished the existing "rotten borough system"[151] under which even on the basis of the whole population "the people of the rural districts in South Alabama, or more properly in the Black Belt, were heavily over-represented."[152]

---

[143] *Official Proceedings,* III, 3231-3241. According to the debates only some five states, including Alabama, allowed foreigners who had declared their intention to become citizens to vote. The Alabama convention of 1875 had so provided in an attempt to encourage immigration. *Ibid.,* 3217.

[144] *Ibid.,* III, 3416, 3847. The former provisions was dangerous, argued James E. Cobb, in that it would allow the legislature to change the constitution. *Ibid.,* III, 3341.

[145] *Journal of the Convention of 1901,* 1197.

[146] *Official Proceedings,* IV, 4808; Mobile *Register,* August 31, 1901.

[147] Kirk H. Porter, *A History of Suffrage in the United States,* 213.

[148] *Official Proceedings,* III, 3442. It was approximately by these majorities that the Black Belt had been able to control state politics in the days of Populism.

As North Alabama newspapers and delegates pointed out, after the disfranchisement of the Negro, a voter in the Black Belt would have many times the voice in the legislature of a voter in a white county.[153] But South Alabama newspapers and delegates argued that wealth, taxes, and whole population should be represented in the legislature—not just the voting population.[154] "The white people of the black belt are responsible for the civilization of the colored people, for their education, for their support and for their protection, and . . . have a right to representation in the law making bodies of the State" based on the whole population, declared one delegate.[155] The most determined struggle on representation followed the demand of the Black Belt that a provision be written into the constitution forbidding any change in the population basis of representation by the amending process.[156] White county delegates argued that this proviso was unnecessary, undemocratic, and unconstitutional. Black Belt delegates simply demanded the proviso as the price of that section's sacrifice of the Negro vote and declared that without it the Black Belt would not make the sacrifice. Charles H. Greer of Perry County frankly admitted that his people did not know

---

[149] *Ibid.*, II, 2343-2353, III, 3907-3925.

[150] *Ibid.*, I, 1137, II, 2345, III, 2983; Montgomery *Advertiser*, July 18, 1901. President Knox appointed a Black Belt lawyer, Phillip H. Pitts, chairman of the Committee on Representation. Eight of the committee's fifteen members were from South Alabama and seven of these from the Black Belt.

[151] Birmingham *Age-Herald*, March 24, 1901. "The rotten borough system was long ago abolished in England, and it should be abolished in Alabama where it flourishes like a green bay tree," said the *Age-Herald*.

[152] Hallie Farmer, *The Legislative Process in Alabama: Legislative Apportionment* (University, 1944), 10.

[153] Ordinances were introduced proposing that representation be based on "white population" and "voting population." *Official Proceedings*, I, 318, 412; Birmingham *Age-Herald*, April 26, 1901.

[154] Montgomery *Advertiser*, July 27, 1901; *Official Proceedings*, III, 3908-3909, 3913.

[155] *Official Proceedings*, III, 3919.

[156] *Ibid.*, III, 3907 ff.

"which is worst, to have the heel of the White Belt upon our necks, or have the negroes upon our right arm?"[157] Some North Alabama delegates spoke in defense of the Black Belt lest the issue disrupt the convention. Emmet O'Neal declared: "We know that in every great crisis in the history of the Democratic Party, we turn to the Black Belt with confidence that it will roll up the necessary Democratic majority. They have always been true and loyal, and we of the white counties propose to you that you cut down your voting population by eliminating the great mass of negro votes. We do not say to you that we intend to reduce your representation to your voting strength."[158] By a vote of 82 to 27 the convention passed the proviso forbidding any change in the basis of representation by the amending process.[159]

Future representation was to be apportioned on the basis of the whole population after each Federal census.[160] However, considering the failure of state legislatures to make any reapportionment against controlling interests and the fact that the apportionment by the convention itself placed the Black Belt and other rural counties in control of the legislature, future reapportionment was at least doubtful. The fears of under-represented counties became a reality when the lgislature refused to reapportion itself after the census of 1910 and each census thereafter. Although the shift of population toward North Alabama has continued, representation in the legislature of Alabama today is the same as that of more than fifty years ago. The courts have declared reapportionment a legislative matter, and all attempts to force the legislature to reapportionment itself have thus far failed.[160a]

In conclusion, it may be said that the suffrage and representation articles combined were a great victory for Alabama conservatives who took advantage of the decline of Populism in order to regroup their forces to prevent another such movement. The Black Belt, supported by similar-minded industrialists and their able attorneys,[161] had effectively used the race issue to disfranchise not only the Negro but large numbers of whites. The suffrage decisions of 1819 and 1868 had both been reversed.

---

[157] *Ibid.,* III, 3916.

[158] *Ibid.* Although many whites were disfranchised by the Constitution of 1901, relatively, the Black Belt did lose popular voting strength in the election of governor and other state officials by the disfranchisement of the Negro, but by apportionment in the legislature it maintained control of perhaps the most important branch of the state government. Hence, governors pledged to reapportionment and other reforms since 1901 have been blocked at every turn by the legislature.

[159] *Ibid.,* III, 3923.

[160] *Ibid.,* IV, 5026.

[160a] See Hallie Farmer, *The Legislative Process in Alabama: Legislative Apportionment,* 26-31.

[161] Although they had similar interests in regard to the Negro and the creation of a conservative electorate, the railroads and other industries expected Black Belt support for a policy of non-state regulation of industry. The railroads especially wished to block the creation of an effective railroad commission.

Alabama had been made safe not only for white supremacy but the supremacy of white Bourbon Democracy. Moreover, instead of abolishing the inequality of representation in the state legislature, the convention actually consolidated and made more permanent the power of the Black Belt oligarchy in that body. Therefore, both in regard to suffrage and representation the new constitution was grossly undemocratic. When the Birmingham *Age-Herald* complained that Black Belt leaders were "dictating the leading terms of the new constitution,"[162] the Wilcox *Era* replied: "The *Age-Herald* will never forgive the Black Belt for sending distinguished delegates to the constitutional convention. It would be well for our . . . contemporary to remember that she had the same privilege."[163] If the conservatives could use the white supremacy issue as effectively in the campaign for ratification, the whites of Alabama's hills and pine barrens would help to disfranchise the Negro and at the same time prepare the way for the loss of their own franchise.

[162] Quoted in Montgomery *Advertiser,* July 30, 1901.

[163] Quoted in *ibid.,* July 18, 1901.

CHAPTER XIX

GENERAL CONSTITUTIONAL REVISION

One of the most important issues to come before the convention was that of state control of railroads. Significant within itself, it also showed the alignment between corporate interests and the Black Belt by which decisions on the suffrage, representation, control of railroads, and most of the reform measures to come before the convention were made. Although the Alabama Railroad Commission had been established by statute in 1881, it did not have plenary powers and was an appointive rather than an elective commission.[1] Under its able chairman Walter L. Bragg and his two associates the commission met with initial successes, but its influence declined after the legislature refused to give it additional powers in 1885.[2] In this period the people of the state seemed more interested in getting more railroads than they were in regulating the existing systems. However, in the eighteen-nineties popular demand for railroad regulation increased as the railroads grew more numerous and powerful. It is safe to conclude that long before the convention of 1901 a large majority of the people of Alabama wanted an effective commission. The Georgia commission of 1879 became a model for those in Alabama who wanted a commission with authority to fix and enforce uniform rates, establish freight classifications, and prevent discrimination.[3] Before the turn of the century, Braxton Bragg Comer assumed leadership of the forces in the state demanding railroad regulation,[4] an issue upon which he was elected to the railroad commission in 1904 and governor in 1906. Having been defeated in the legislature because of strong railroad influences, advocates of railroad control were determined to write into the Constitution of 1901 provisions for a popularly elected commission with plenary powers. Also, they were determined to strengthen clauses forbidding free passes in the Constitution of 1875,[5] which had never been enforced.

---

[1] James F. Doster, *Alabama's First Railroad Commission, 1881-1885* (University, 1949), 44-46.

[2] *Ibid.*, 178-179; Allen J. Going, "The Establishment of the Alabama Railroad Commission," *Journal of Southern History*, XII (1946), 384-385. "Since the time of Captain Bragg, who attempted as it was designed, to make it useful to the State, and who was fought to the death, the Commission has degenerated into a sinecure and junket," said the Montgomery *Advertiser*, July 23, 1901.

[3] James F. Doster, "The Influence Upon Alabama of Georgia's Regulation of Railroads," *Georgia Historical Quarterly*, XXXVII (March, 1953), 39-51.

[4] James F. Doster, "Alabama's Political Revolution of 1904," *The Alabama Review*, VII (April, 1954), 85-86.

Much fear existed of possible corporate influences in the convention of 1901, but the Democratic State Convention, finding it necessary in order to secure the call of the convention, pledged that "restrictions in the state constitution as to corporations shall remain unchanged."[6] During the campaign for the election of delegates, the Selma *Times* declared that "corporation lawyers will control the coming constitutional convention."[7] And the Birmingham *Age-Herald* warned the people that the corporations "were at work beneath the surface and the great masses of the people should be wide awake."[8] As previously indicated, some of the most important railroad lawyers in the state—John B. Knox, George Paul Harrison, Gregory L. Smith, James Weatherly and others—were elected to that body. Thomas W. Coleman represented banking interests and William A. Handley's corporate interests were very extensive. Another influential delegate, especially in regard to suffrage, was Russell M. Cunningham, later lieutenant-governor and candidate for governor. He was physician of the Pratt mines, one of the Sloss enterprises, which worked the largest number of convicts in the state.[9] Exercising an influence far out of proportion to their numbers, these men helped elect Knox president of the convention and he in turn placed many of them in key positions on committees. They and their Black Belt allies were the artisans of the suffrage plan of the majority and all supported it wholeheartedly except Harrison, who like Oates and Jones wanted to disfranchise whites and blacks alike without subterfuge. Industrial interests now expected Black Belt support against regulatory measures. Advocates of reform thus faced a convention in which corporate conservative influences were greater even than in recent sessions of the legislature. A letter to the editor of the Montgomery *Advertiser* asked whether any reform were possible "with a leading railroad attorney chairman of the Rules Committee, another chairman of the Corporations Committee, and another president of the convention."[10] Although the organization and control of the convention by the conservatives influenced the whole course of the convention, nowhere was its effect more direct than on the Committee on Corporations, of which Harrison was chairman. According to the Selma *Times,* a delegation from that city appearing before the Committee on Corporations in the interest of railroad control "recognized the familiar features of so many prominent railroad attorneys that were to pass upon their petition"[11] that they immediately lost heart.

---

[5] Article XIII, section 23.

[6] Minutes of the State Democratic Convention, March 29, 1899; Mobile *Register,* April 27, 1900. Fear of corporate influences in the convention is expressed in the following letters: J. W. A. Sanford to Robert McKee, March 20, 1899, in McKee papers; J. W. A. Sanford to Montgomery *Advertiser,* May 8, 1899, in Sanford papers, Alabama Department of Archives and History.

[7] Quoted in Mobile *Register,* February 27, 1901.

[8] Birmingham *Age-Herald,* February 6, 1901.

[9] The convention ordered Cunningham's major speech on the suffrage printed, an honor given only to Cunningham, Knox, and Coleman. Cunningham was also physician for the Alabama Steel and Shipbuilding Company, which in 1899 had been financed in part by the Louisville and Nashville Railroad at the instance of J. P. Morgan and O. H. P. Belmont. Owen, *op. cit.,* III, 443-444; Armes, *The Story of Coal and Iron in Alabama,* 430, 465. It may be said to Cunningham's credit, however, that he was opposed to the convict lease system. While physician of the State penitentiary (1881-1885), he carried out reforms which drastically reduced the death rate among convicts. *Official Proceedings,* IV, 4904-4906.

Thousands of Alabamians petitioned the convention in favor of an elective railroad commission with mandatory powers, paid by the people instead of from a special fee levied on the railroads.[12] Many asked that telegraph, telephone, and express companies also be placed under the commission. An even larger number of petitions against the free pass evil reached the convention.[13] Although these petitions came from groups of citizens and commercial organizations all over the state, the greatest force of the movement originated in Birmingham where the Freight Bureau under the leadership of Braxton Bragg Comer carried on a campaign of education through letters, petitions, broadsides, and advertisements in favor of a railroad commission of the Georgia type.[14] "It is claimed that the remedy should be left to the legislature. Any man in Alabama knows that the Railroads have proven too powerful for the legislature,"[15] resolved the Birmingham Freight Bureau. The Bureau estimated that as a result of uncontrolled rates in Alabama the railroads collected "between one and a half and two million dollars a year excess charges more than they collected on the same tonnage in Georgia."[16]

The railroads answered this campaign with an equally voluminous amount of literature and lobbying, including articles by John V. Smith, president of the Railroad Commission as well as chairman of the campaign committee for the constitutional convention.[17] Smith, really a spokesman for the railroads, claimed that the existing commission had adequate powers and was effectively regulating the railroads.[18] Many of the prominent newspapers of the state, the Montgomery *Advertiser* taking the lead,[19] demanded the abolition of the free pass evil but opposed the creation of an elective railroad commission with mandatory powers. Reciting the history of the failure of the legislature to take action enforcing the prohibition against free passes contained in the Constitution of 1875, the *Advertiser* declared that "legislators with passes in their pockets will not vote to stop the pass evil." But the convention should not make the "railroad commission absolute rate maker for railroads," the editor stated.[20] "The railroads have done much to develop the state. They should be regulated by the commission, but the regulation should not be carried to the extreme that may be injurious to the railroad interests."[21] The *Advertiser* opposed an elective commission because it would only add "a new and powerful factor [the railroad lobby] to those which already poison the elective franchise in Alabama."[22]

---

[10] Montgomery *Advertiser,* July 21, 1901. The *Advertiser* declared in an editorial that the charge was "true, but as we have pointed out before, all railroad attorneys are not blind partisans of their corporations." See Mobile *Register* February 15, 1903, for an interesting account of this alliance between the railroads and the Black Belt during the period of the convention.

[11] Quoted in Montgomery *Advertiser,* June 25, 1901.

[12] *Official Proceedings,* I, 1049, 1050, 1051, 1188; II, 1547, 1549, 1983, 1984, 2025 2105, 2498, 2567, 2608, 2679, 2685, 2703; III, 2762, 3014; IV, 4629.

[13] *Ibid.,* III, 2899, 3206, 3253, 3480, 3628, 3683, 3745, 3746, 3747, 3852, 3853, 3854 3884, 3886, 3901, 3936, 3937, 3988, 3989; IV, 4224, 4225, 4227, 4321.

[14] Doster, "Alabama's Political Revolution of 1904," *The Alabama Review,* VI (April, 1954), 86; Montgomery *Advertiser,* July 23, August 11, 1901; Birmingham *News,* June 11, July 12, 17, 26, 1901. The Mobile Chamber of Commerce, after listening to addresses from commercial representatives from Birmingham, petitioned the convention in favor of the "removal of the state railroad commission from under the influence of the railroads." Mobile *Register,* June 29, 1901.

[15] Montgomery *Advertiser,* July 23, 1901.

[16] *Ibid.*

As the petition campaign grew in intensity, the railroads pressed for immediate consideration of the suffrage article in the belief that once it was disposed of the convention would soon adjourn "and do nothing the railroads opposed."[23] A revision of the suffrage was the main reason for the convention; any controversial measure in the new constitution might defeat the suffrage plan and the whole document when submitted for popular sanction, they argued. And for several reasons the committee on corporations delayed its report. A minority report was threatened and public opinion could not build up against the report until it was made.[24] Contrary to some reports, the Louisville and Nashville and other railroads preferred to continue to use free passes to influence people rather than be relieved of the burden of granting them.[25] Finally, partially at least through the efforts of Coleman,[26] the minority led by Joel R. Murphee of Troy was won over to a compromise.[27] Legislators and judges but not other state, municipal, or county officials were forbidden to receive free passes on penalty of forfeiture of office, a $500 fine, and imprisonment. The section empowering the legislature to regulate railroads would be strengthened by copying much of the language of the 1877 Georgia constitutional provisions on railroads.[28] No provision at all would be written into the constitution concerning a railroad commission, which was of course a defeat for those who wanted an elective commission with mandatory powers. The report of the committee was made late and for strategic reasons was the last report considered by the convention. A minority of three members still made a report in favor of limiting all associations lending money in Alabama to a rate of eight per cent interest.[29]

---

[17] *Ibid.,* July 23, August 13, 25, 1901. At one stage in the convention's deliberations ex-Governor Jones asked to have railroad lobbyists removed from the floor of the convention. Mobile *Register,* July 19, 1901.

[18] Montgomery *Advertiser,* August 25, 1901. Advocates of railroad control quoted the following news item from the Birmingham *News,* August 6, 1901, and then asked the public to decide whether they had a railroad commissioner: "Honorable John V. Smith, chairman of the State Railroad Commission, accompanied by his family, Honorable T. D. Smith and family and G. W. Hughes and family will leave here tonight in the private car of the Tennessee Coal and Railroad Company over the Louisville and Nashville Railroad for a trip to Buffalo and other points in New York State. The trip will last for about two weeks and probably longer. A delightful time is anticipated." Montgomery *Advertiser,* August 11, 1901. See also James F. Doster, "Railroad Domination in Alabama, 1885-1905," *The Alabama Review,* VII (July, 1954), 193.

[19] The Montgomery *Advertiser,* more than any other newspaper in the state, fought for abolition of the free pass evil. Through its editorial columns and its correspondents over the state it inspired many of the petitions on the subject. On July 19, 1901, the *Advertiser* devoted its front page to short *verbatim* protests of citizens of Alabama against the evil. For lists of newspapers taking a prominent part in the campaign against the free pass evil and organizing methods used by the *Advertiser,* see *ibid.,* July 17, 20, 23, 28, August 10, 1901.

[20] *Ibid.,* July 20, 1901.

[21] *Ibid.,* July 27, 1901.

[22] *Ibid.,* June 27, 1901. "For the sake of that elective purity which we are all advocating, do not invite the railroads to invade the ballot box," urged the Mobile *Register,* July 3, 1901.

[23] Montgomery *Advertiser,* July 11, 12, 13, 1901. Some reports circulated in Montgomery to the effect that the movement to consider the suffrage in caucus was an effort "on the part of the representatives of corporations to bring the convention to a speedy termination in the hope that important matters which were opposed by the corporations would not come up for consideration." *Ibid.,* July 12, 1901. See also *ibid.,* July 13, 16, 1901.

Advocates of railroad control first attacked the free pass evil by attempting to attach a rider section outlawing free passes for all public officials to the legislative article.[30] Defeated on several close votes,[31] some voting against it because they said it should be a part of the corporation's article, they again made the fight during the discussion of the article on corporations.[32] Gregory L. Smith, attorney for the L. and N. Railroad, argued that the history of Mississippi, where free passes were outlawed for public officials by the constitution and penal statute, proved that such a provision could not be enforced.[33] Debate became very bitter. One delegate, also a member of the legislature, charged that "two-thirds of this distinguished Committee on Corporations . . . are railroad lawyers, willing to make me walk but providing that they shall ride."[34] Delegates pointed out that judges and legislators were by no means the only state officials amenable to railroad influences. Leslie E. Brooks of Mobile, one of the leaders for railroad regulation, thought the compromise worthless because "you must put the penalty on the road that gives the pass as well as on the officers of the State of Alabama who accept them."[35] However, the convention adopted the compromise section on free passes by a voice vote.[36]

---

[24] Harrison held frequent sessions of the committee but continued to delay any report. On one occasion he reprimanded a member of the committee because he said he was responsible for a news story which declared that Harrison adjourned the committee because he "feared final action . . . on the anti-free pass question." Montgomery *Advertiser,* July 12, 1901.

[25] *Ibid.,* July 23, 1901.

[26] *Ibid.,* July 24, 1901; *Official Proceedings,* III, 3120.

[27] *Official Proceedings,* IV, 4554, 4567-4568; Mobile *Register,* July 21, 1901; Montgomery *Advertiser,* July 11, 24, 1901.

[28] Montgomery *Advertiser,* July 25, 26, 1901; *Official Proceedings,* III, 2903-2906; IV, 4554-4558. Under the leadership of Robert Toombs, the Georgia Convention of 1877 took much stronger action for railroad regulation than the Alabama Convention of 1875. See Ethel K. Ware, *A Constitutional History of Georgia,* 162-163.

[29] *Official Proceedings,* III, 2902.

[30] *Ibid.,* II, 2319-2343.

[31] *Ibid.,* II, 2323, 2337, 2340.

[32] *Ibid.,* IV, 4558-4571.

[33] *Ibid.,* II, 2329-2330.

The much more important issue of an elective commission with plenary powers overshadowed the free pass fight.[37] John W. A. Sanford of Montgomery and Frank S. White of Birmingham joined Brooks in leading the forces for an effective commission; Harrison and Smith were leaders of the opposition. Harrison charged that the petitions campaign had not been spontaneous. "They were not only written in the same language, . . . but most of them were printed on the same typewriter," he said. The Georgia railroad commission was not created by the constitution of Georgia, he argued, and the committee had accepted the strong "provision of the Georgia Constitution . . . against the railroads."[38] Advocates of an effective commission declared that stronger language in the constitution was of little value, since the legislature could regulate railroads under the police power without constitutional provision. The point was that there had been no effective regulation because the legislature had been controlled by the railroads.[39] Brooks of Mobile declared that the compromise "will have about as much force and effect as Rule 56 of this 'lobby-ridden' Convention, the rule which is designed" to deny the privileges of the floor to railroad lobbyists.[40] By a vote of 79 to 39 the convention tabled White's amendment providing for an elective commission with mandatory powers.[41] An analysis of the vote shows an alignment not very different from that on the suffrage; the chairmen of the suffrage and representation committees and a large majority of the other Black Belt delegates voted with the railroads. The convention, by a vote of 74 to 36, also refused to adopt the minority report which forbade any individual or corporation to charge more than eight per cent interest.[42] Ordinances levying a tax on corporations for school purposes, limiting the amount of land owned by a corporation, and prohibiting one corporation from owning stock in another were never reported from the committees to which they were referred.[43]

---

[34] *Ibid.*, IV, 4566. This was a reference to the provision in the committee report that railroad attorneys, who became members of the legislature, might ride on free passes.

[35] *Ibid.*, IV, 4563.

[36] *Ibid.*, IV, 4571.

[37] *Ibid.*, IV, 4547-4558, 4593-4598.

[38] *Ibid.*, IV, 4550.

[39] *Ibid.*, IV, 4552-4553.

[40] *Ibid.*, IV, 4581.

[41] *Ibid.*, IV, 4597.

[42] *Ibid.*, IV, 4545. This minority report was directed mainly at building and loan associations which had been exempt by the legislature from the law imposing an eight per cent limit. *Ibid.*, 4516-4545.

It soon became apparent that the convention, under the control of the conservatives, would consider no constitutional alteration that changed the existing order. Again and again the majority argued that the convention had been called "to reform the suffrage" and "perpetuate white supremacy"; any change of a controversial nature would threaten the major work of the convention when submitted for ratification. One of the most pressing needs in Alabama was a reform of the convict lease system, but the convention gave scant consideration to the matter.[44] The Mississippi convention of 1890 had made the convict lease system illegal in that state.[45] Charles P. Beddow, spokesman for Birmingham labor, proposed to abolish convict leasing in Alabama. Reminding the convention that most of the convicts were concentrated in the mines of Birmingham, he declared that "Jefferson County and North Alabama now ask to be relieved of this incubus" because "every convict worked in the mines takes the place of free labor."[46] He called upon the convention to provide "some plan similar to that in other States of the Union where the convicts are employed in matters of public improvement."[47] "Should this great Convention, called for the purpose of accomplishing a great moral reform" continue the present lease system and thereby "commit a murder every four days in the year,"[48] asked R. M. Cunningham of Jefferson. Speaking for the majority, a delegate replied that "it is a question of business and we should not be carried off our feet by sentiment. Sentiment suggests putting them on the farm," but the State farm lost $300,000 for the state in four years.[49] Refusing a call for the ayes and noes, the convention tabled Beddow's amendment by a voice vote. And by a vote of 56 to 55 the convention also refused to forbid the working of short term prisoners guilty only of misdemeanors in the mines.[50] Despite much recent agitation against child labor in Alabama, ordinances empowering the legislature to regulate child labor or prohibiting child labor, referred to the committee on corporations, were never heard from again.[51] The convention also showed

[43] *Ibid.*, I, 214, 401; II, 2686.

[44] *Ibid.*, IV, 4903-4909.

[45] Article X, sections 223-226.

[46] *Official Proceedings*, IV, 4903.

[47] *Ibid.*

[48] *Ibid.*, IV, 4906.

[49] *Ibid.*, IV, 4907-4908.

[50] *Ibid.*, IV, 4908-4909.

[51] *Ibid.*, I, 313, 432. A dramatic fight against child labor in Alabama had taken place in the legislature immediately preceding the assembling of the constitutional convention. Irene M. Ashby, an English woman working for the American Federation of Labor, spent months in Alabama making a survey of child labor conditions. As a result of her survey and agitation, a child labor bill forbidding the working of children under 12 years of age and requiring their attendance in school was introduced in the House and the Senate by Birmingham legislators. Although supported before the legislature by Edgar Gardner Murphy, ex-Governor Thomas G. Jones, ministerial associations, women's clubs, and a large number of private

its conservatism by adopting a provision forbidding the legislature to "make primary elections compulsory."[51a]

The problems of taxation and education, two of the most important issues to come before the convention, were closely related since education was by far the largest single item in the state's budget. Future funds for education would depend on the degree to which limits were set on the state's taxing power, on the share of tax levies assigned to education, and on whether the convention provided for local taxation for public schools. Educational progress had been throttled by constitutional restrictions on local taxation for schools under the old constitution. According to the debates in the convention Alabama was the only Southern state whose constitution prohibited special local school taxation in the late nineteenth century.[52] In pre-convention pledges, the Democratic party had promised that the convention would not raise the tax limit; nor would it take any "backward step in the cause of education."[53] "I believe we should keep faithfully the pledges we have given not to increase taxation, but this should not deter us from making every effort to rid our State of the disgrace of illiteracy,"[54] declared President Knox in his opening address. Knox also observed that Southern states which had already limited the suffrage "have rightfully considered that the betterment of facilities for securing an education for all the people was a necessary and essential part of any just and wise scheme for the regulation of the right of suffrage, and the purification of the ballot."[55]

"White" county interest in a convention dedicated to the advancement of public schools had been made well known through their newspapers and leaders. Some white county delegates asserted that their people were more interested in additional support for public education than in disfranchisement of the Negro.[56] On the other hand white counties charged that the black counties did not share their interest in additional support for public education because existing funds available to them were more than sufficient for the education of white children.[57] Under the Apportionment Act of 1891 the state superintendent of education was instructed to apportion funds to all counties in the state "according to the entire number of children of school age," but township trustees were then empowered to distribute the money "as they may

---

citizens, advocates of the child labor bill were not able to overcome the basic conservatism of the legislature and the work of two corporation lawyers "employed by the mill interests to crush the bill." Irene M. Ashby, "The Fight against Child Labor in Alabama," Montgomery *Advertiser,* June 2, 1901. See Birmingham *Age-Herald,* February 6, 1901, and Mobile *Register,* May 9, 1901, for other accounts of the issue.

[51a] *Official Proceedings,* III, 3846.

[52] *Official Proceedings,* IV, 4282.

[53] *Ibid.,* I, 1225; II, 1332, 1352, 1433, 1437.

[54] *Ibid.,* I, 15.

[55] *Ibid.,* I, 16.

[56] *Ibid.,* I, 1226, II, 1433, 1610.

[57] *Ibid.,* II, 1376; Birmingham *Age-Herald,* January 20, 1901.

deem just and equitable."[58] As a result of this law, township trustee in the black counties did not divide funds between the races on a pe capita basis. Negro teachers were hired for less than white teachers an less money was spent on buildings and equipment for Negroes. Thu more money became available per capita for the white child in the Blac Belt than in the white counties.[59] Funds were often available in th black counties to defray all or part of the expenses of white students wh went away to an academy or college.[60] When the prevailing attitud that the education of the Negro "ruined a good field hand" is also take into consideration, the lack of general enthusiasm for additional taxatio for public schools in the Black Belt is at least explainable. On the othe hand, the desire of the white counties to furnish better educational opportunities to white children brought insistent demands for better publi schools. Nevertheless, considerable support for dividing funds for public education according to the taxes paid by each race existed in both th white and black counties. Race feeling, based on social and economi rivalry with the Negro, had always run high among the poorer whites Max Bennett Thrasher wrote the New York *Evening Post* that mor than half of over twenty ordinances introduced in the Alabama convention on education favored a division between the races on the basis o taxes paid.[61] The Mobile *Herald* complained that "Negroes in Alabama pay three per cent of the taxes and receive fifty percent of the educationa advantages."[62] And the Selma *Journal* declared that "if the constitutional convention shall accomplish but one reform, and that the separating of the education fund so that white children shall receive the benefi of the taxes of white people and the colored children receive the benefi of taxes of Negro taxpayers, it will have conferred upon this peopl a lasting benefit."[63]

Chairman Cecil Browne, lawyer and legislator who had recently le the fight in the House of Representatives against an effective railroa commission,[64] made the report of the tax committee.[65] The report reduced the 7.5 mills tax limit of the 1875 Constitution to 6.5 mills. William A. Handley moved this reduction in the committee on taxation and his influence and leadership were especially important on financia matters.[66] Browne, Handley, Harrison, Cunningham, and other members of the committee defended the reduction at length on the floor of the convention.[67] They argued that reduction was not only a direct benefit to every taxpayer in the state, but it would encourage immigration and bring the establishment of new manufacturing enterprises because industries settle where they have tax protection. "I do not desire this reduction of taxation for the benefit of the poor farmer alone, of whom we have heard so much on the floor of this convention," declared the chairman of the taxation committee. "I desire it mainly in the interest of the welfare and industrial development of the state of Alabama. . . . Industries and capital will not come to Alabama and locate where you have a fixed lien on their property of 75 cents upon the $100, when they can go to States which have equal advantages, and where the lien is much less."[68]

---

[58] *Acts of the General Assembly of Alabama* (1890-1891), 554. Prior to 189 the law required that the state superintendent distribute funds "between the race . . . so that all children who attend the public schools established for them sha receive equal benefit from such fund." Bond, *op. cit.,* 160.

[59] Bond, *op. cit.,* 161-163; Weeks, *op. cit.,* 170.

[60] *Official Proceedings,* II, 1376.

[61] Max Bennett Thrasher, "Alabama Constitution Making," Montgomery *Advertiser,* June 16, 1901. Copied from the New York *Evening Post.*

[62] Quoted in Birmingham *Age-Herald,* April 16, 1901.

[63] Quoted in *ibid.,* March 12, 1901.

[64] Owen, *op. cit.,* III, 237-238.

[65] *Official Proceedings,* I, 557-561.

Proponents of reduction reviewed the history of taxation since 1875, showing how as a result of rising evaluations the tax of 7.5 mills on each $100 was reduced in 1877 to 7 mills, in 1880 to 6.5 mills, and finally in 1890 to 4 mills. It was true that after the panic of the eighteen-nineties the tax level had reached the 7.5 mill limit again. But rising property evaluations, the growing importance of license and privilege taxes, and a surplus in the treasury were all evidences that the reduction could now be made, they declared. They pointed to the pledge that taxes would be reduced if possible, and emphasized the happy effect that a reduction of the tax limit would have in the campaign for ratification. John W. A. Sanford best expressed the basic philosophy of restrictions on government, accentuated in Alabama since the Reconstruction era. "The more you limit power, the more you expand liberty; the more you curtail authority, the better it is for freedom, and therefore, I am for limiting the Legislature in its power of taxation to the utmost point that can safely be done,"[69] he asserted.

Opponents of the reduction maintained that the big question was whether this reduction could be made "without sacrificing either the credit of the state, the educational interest of the State, or the interests of the old soldiers."[70] Drawing on their experiences as governor, Oates and Jones, joined by Thomas H. Watts and other able delegates, argued with force against the reduction. During the panic of 1893 both Jones and Oates had been forced to borrow more than $500,000 in New York in violation of the clause in the Constitution of 1875 which limited the governor's borrowing power to $100,000.[71] They showed how evaluations of $275,000,000 in 1891 had dwindled to $241,000,000 in 1895.[72] Although evaluations had again climbed to a figure comparable to those of 1891, in another panic the reduced tax limit might bankrupt the state and make it necessary to drastically curtail expenditures for public schools and Confederate pensions. Emmet O'Neal denounced the reduction as "unwise, unsafe and injurious to the credit of the state."[73] Many of the delegates declared that it was a popular move to secure votes. Proponents of the plan "think it will prove to be a great vote catcher," observed the Mobile *Register*.[74] With the Carpetbag era more than a quarter century in the past, it was foolish to make the tax limi even more severe, opponents of the plan declared. Delegates and news papers pointed out, as the Brookings Institute did at a later date, tha tax limitations really defeat their own purpose since they hamper th ability of the state to pay bonded indebtedness and thus cause interes rates to rise.[75] No tax limit is to be found in the constitutions of "th great and progressive States of this Union,"[76] observed Emmet O'Neal Despite letters of opposition from Governor William D. Jelks, the stat auditor, the state treasurer, and other high state officials, all of whom warned of possible financial disaster,[77] the 6.5 mills tax limit was adopted by a vote of 66 to 32.[78] The convention adopted the report of the ta committee making provision for the refunding in 1906 of more tha $8,000,000 of the state's debt, doubtful under the old constitution.[79] Also adopted was the provision allowing the governor to negotiate temporar loans of $300,000 as contrasted with $100,000 under the Constitution o 1875. It postponed for consideration with the report on education recommendation in favor of special county and municipal taxes fo education.

---

[66] D. W. McIver, "Honorable William A. Handley," Montgomery *Advertiser*, December 13, 1903. Handley was a member of the committees on the suffrage, taxation, and banks and banking.

[67] *Official Proceedings*, I, 1205-1305, II, 1319-1365.

[68] *Ibid.*, I, 1214.

[69] *Ibid.*, II, 1359.

[70] *Ibid.*, I, 1227.

John Brown Graham of Talladega, chairman of the committee o education, was superintendent of schools of Talladega County and a we known educator.[80] However, the membership of his committee was no equally apportioned among the different sections of the state.[81] Fourtee of its nineteen members came from counties with Negro majorities. Th committee submitted a majority and a minority report.[82] The former provided for a 3 mill school tax and a 1 mill local optional tax to be levied by the counties; the latter to be exclusive of the 6.5 mills limit for the state. This optional county tax, of course, brought the tax limit to 7.5 mills again. It was included in the education report as a result of the 1 mill tax reduction by the taxation committee, as the committee on education had previously voted down any such proposal despite great popular pressure for some kind of local taxation for schools.[83] The minority report declared: "The divorcement of the white and colored school systems stand side by side in importance with the proper suffrage regulation." Practically, however, it differed from the majority only in that it provided in addition for local district taxation for schools. White and Negro school districts were to be organized, without reference to each other as to territorial boundaries, each to have the privilege of levying a one mill tax for schools on the property of its own race by a vote of three-fifths of the white or colored qualified electors of the district as the case might be.[84] The 3 mill tax levy on an evaluation of $270,408,000 was the equivalent of the annual appropriation of $550,000 for schools and the annual 1 mill school levy amounting to $257,000—a total of $807,000 for schools in 1900-1901 exclusive of the poll tax and other special funds.[85] Public opinion demanded that a 1 mill tax for Confederate veterans levied since 1896 be maintained. With a limit of 6.5 mills, only 2.5 mills remained for the general expenses of the state.

---

[71] Speeches of William C. Oates and Thomas Goode Jones, *ibid.*, I, 1294-1303.

[72] *Ibid.*, I, 1217, 1284.

[73] Mobile *Register*, July 2, 1901.

[74] *Ibid.*, August 4, 1901.

[75] The Brookings Institution, Institute for Governmental Research, *Taxatio of the State Government of Alabama*, 51-54. Report on a Survey submitted Governor B. M. Miller. In five Volumes, Volume 4, part 3; *Official Proceeding* I, 1289-1292. The Mobile *Register*, June 30, 1901, pointed out that "security fo the outstanding state debt is the people's willingness to tax themselves to pay it

[76] *Official Proceedings*, II, 1333.

[77] Letters printed in *ibid.*, I, 1278-1279, II, 1320-1321. Jelks had become gove nor upon the death of William J. Samford, June 11, 1901.

[78] *Ibid.*, II, 1364-1365.

[79] *Ibid.*, I, 1192, 1289.

[80] Owen, *op. cit.*, III, 688.

[81] *Official Proceedings*, I, 102.

The debate which followed the education report centered on the issue of whether the general expenses of the government could be maintained, the interest on a large bonded indebtedness paid, and a large part of the debt advantageously refunded in 1906 as provided for in the taxation report with only 2.5 mills of the total limit left for these purposes.[86] Finally, friends of education had to accept a proviso to the effect that "nothing herein contained shall prevent the Legislature from first providing for the payment of the bonded indebtedness of the State and interest thereon out of all the revenues of the State."[87] Although for a few years at least, schools would receive only a sum equivalent to recent annual apropriations, the new constitution set aside a minimum part of the state revenue for educational purposes. As tax values increased, funds for schools would increase and the legislature was instructed to grant the schools more than the 3 mills tax when possible. The security growing out of a fixed constitutional provision, the removal of the uncertainty which accompanied annual efforts of the schools to secure adequate funds, and the assurance of future growth all combined to make the educational provisions of the new constitution better than the $100,000 guaranteed the schools under the old.[88] The popularity of additional aid to education in North Alabama, where convention leaders were most in need of support for the suffrage article, was a factor in the passage of the 3 mills provision. "I am in favor of 3 mills for school purposes," declared William A. Handley. "It will be a grand thing to increase the popularity of the Constitution and secure its ratification all over Alabama; the white people everywhere will endorse it, especially in the hill counties in Alabama."[89]

---

[82] *Ibid.*, II, 2033-2042.

[83] *Ibid.*, II, 1434.

[84] *Ibid.*, II, 2042.

[85] *Ibid.*, II, 2034; Weeks, *op. cit.*, 199, 202. The total amount available for education, including the poll tax and trust funds was $1,180,283 or $1.67 per child in 1900-1901. *Ibid.*, 199.

[86] *Official Proceedings,* IV, 4166-4221.

[87] *Ibid.*, IV, 4219.

One part of the report of the education committee, adopted by the convention, incorporated into the new constitution phraseology similar to that of the 1891 school apportionment act, which gave wide discretionary powers to local trustees and made a per capita division of funds between the races unnecessary. Funds were to be apportioned so "as to provide, as nearly as practicable, school terms of equal duration."[90] Although some of the delegates wished to place provisions in the new constitution dividing the general state appropriation for schools between the races according to the taxes paid by each race, at no time did this issue come squarely before the convention. However, the lesser measure of dividing funds from a local district tax accordingly was debated at length and came to a vote. In the convention's early sessions, Max Bennett Thrasher wrote that next to the disfranchisement of the Negro the issue of dividing school funds on the basis of the amount paid by each race would be the most important question before that body.[91] Thirty-three delegates, led by Erle Pettus of Limestone County, met in caucus and pledged themselves to carry the fight for "dividing the school money between the races proportionate with the taxes paid"[92] to the floor of the convention. However, wiser counsels finally prevailed. Many delegates pointed out that it would indeed be a travesty on justice to disfranchise the Negro for his ignorance and then deny him the means of securing an education.[93] The Mobile *Register* thought that the division of school funds by race according to the taxes paid "would be a political mistake of the first order. We must not disfranchise the Negro on account of his ignorance and then refuse him help to escape from his ignorance. That would reflect upon our motive."[94] The Montgomery *Advertiser,* not noted for its liberalism, said that such a provision would bring on us the "condemnation of the greater part of the people of this country."[95] Delegates likewise expressed fear of the effect of such open discrimination on Northern public public opinion and on the United States Supreme Court's review of the suffrage article. A measure so unjust and unconstitutional could only endanger the suffrage decision, they maintained.[96] As the Washington petition to the convention and advocates of justice to the Negro observed, the Negro paid his share of the taxes "since the negro who rents a farm or a house not only pays the rent, but indirectly, the taxes also."[97] As in the suffrage debates, ex-Governors Jones and Oates made the most effective defense of the Negro's rights. Jones denounced the plan "because of its unconstitutionality and its injustice and inexpediency."[98] He introduced an ordinance declaring a division of taxes "according to the poverty or riches of a class or race" a violation of "the fundamental principles of justice and free government."[99]

---

[88] In the words of the committee report: "The superior merit of this plan is that it fixes the school fund permanently, and does not leave it to the General Assembly as a matter of contention at each session. It is a sliding scale. If the state prospers and assessments increase, the schools get a larger fund. If values decrease, then the schools share as they should, the adverse conditions." *Ibid.,* II, 2034.

[89] *Ibid.,* IV, 4176.

[90] *Ibid.,* II, 2035. In commenting on the committee report, the chairman said that "this section has been changed by striking out the word 'equal' as a basis of apportionment and substituting in substance and fact the provision for a free school term of equal length as a basis of division of the school fund in the respective townships and districts." *Ibid.,* II, 2033; Bond, *op. cit.,* 184-186.

[91] Max Bennett Thrasher, "The Alabama Constitutional Convention," *Outlook,* LXVIII (June 22, 1901), 437.

[92] Mobile *Weekly Register,* June 22, 1901.

[93] *Official Proceedings,* IV, 4274-4309.

Strangely enough, the minority report on education, providing for the division of a local 1 mill district tax by the creation of independent white and Negro local school districts, was signed by four delegates from the white counties, which had only five delegates on the committee.[100] None of the fourteen delegates from the black counties gave it their support. The whole plan was an attempt at political strategy by the white county delegates.[101] They knew that with the Black Belt and industrial interests in control of the convention, the only hope of district taxation for schools lay in hurdling the race issue. They reasoned that the Black Belt might support the plan if relieved of dividing funds with a Negro school population that exceeded two-thirds of the whole. Therefore, what seems to be a more bitter attitude toward the Negro on the part of the white county committee members was really only an effort to secure support for local district taxation by playing the game of the black counties—making the issue a race issue. They failed in their attempt to use a strategy so often used successfully by the Black Belt as the convention voted down the plan 90 to 31.[102] In the debate, advocates of the minority plan pointed out that by act first approved in 1875, the poll tax had been divided between the races for schools according to the amount paid by each race.[103] Moreover, it was argued that the Negro favored the plan because it would develop race pride and initiative.[104] Richard C. Jones of Wilcox County, speaking for a small group of Black Belt paternalistic leaders, replied that he had never heard of a Negro who wanted taxes divided as paid by race "from Booker T. Washington to a boot black."[105] The main argument, however, was that the white people demand such a division because "they have the negroes hung about their necks like a chain."[106] Again, the most effective answer came from one who spoke in the Wade Hampton tradition of Black Belt paternalism. "If we do not lift them up, they will drag us down,"[107] declared ex-Governor Thomas Goode Jones.

---

[94] Mobile *Register,* June 7, 1901.

[95] Montgomery *Advertiser,* May 31, 1901.

[96] *Official Proceedings,* IV, 4284, 4297. The Birmingham *Age-Herald,* May 11, 1901, declared that "it would be certain to arouse resentments and awaken criticisms that the constitution might not otherwise incur." Division of school funds by creed or profession was just as logical as by race, the editor added.

[97] *Official Proceedings,* I, 191, IV, 4303. William H. Council made a special appeal to the convention against the plan to allocate to Negro schools only the funds paid by that race. "I yield to your demand in the political government of Alabama," he wrote the convention. "But in the name of your fathers, who constituted as grand and honorable manhood as ever graced this earth, I ask, that the white men of Alabama will scorn to do . . . anything to prevent us from rising to that intelligence and dignity necessary to honor your state." The appeal is printed in the Mobile *Register,* May 21, 1901.

[98] Thrasher, "The Alabama Constitutional Convention," *Outlook,* LXVIII (June 22, 1901), 437.

[99] *Official Proceedings,* I, 203; Mobile *Register,* May 31, 1901.

[100] *Official Proceedings,* II, 2041. The only white county delegate not signing was Thomas L. Bulger of Tallapoosa County.

[101] Bond, *op. cit.,* 185.

In addition to the race issue, the debate concerned the relative merits of optional school district taxation or a similar county levy for schools. Also, the issue of whether qualified electors or property holders only should vote in elections deciding whether to levy the 1 mill tax. On the latter issue, J. Thomas Heflin, determined opponent of the Negro and champion of the poor whites, bitterly opposed "letting property decide."[108] He spoke in the interest of the white tenant. Curiously enough, on the issue of support for Negro schools, he argued that the Negro paid little taxes, and therefore deserved little school money.[109] State Superintendent John W. Abercrombie, John Herbert Phillips, superintendent of city schools of Birmingham and nationally known educator, the Alabama Educational Association, and other educational forces in the state backed a school district tax levy similar to the one adopted by the Louisiana convention of 1898.[110] But conservatives opposed school

[102] *Official Proceedings,* IV, 4309-4310.

[103] William L. Martin (ed.), *The Code of Alabama* (1896), I, 1110; *Official Proceedings,* IV, 4285, 4289, 4296.

[104] *Official Proceedings,* II, 2039-2041, IV, 4280, 4289.

[105] *Ibid.,* IV, 4283.

[106] *Ibid.,* IV, 4279.

[107] *Ibid.,* IV, 4303.

[108] *Ibid.,* II, 1348.

[109] *Ibid.,* IV, 4302.

[110] Montgomery *Advertiser,* June 20, August 4, 27, 1901; Birmingham *Age-Herald,* April 22, August 2, 1901. The Birmingham Board of Education petitioned the convention in favor of municipal school taxation for Birmingham and the Ala-

district taxation for the very reason that many educators favored it; in others states it had aroused more interest, proven easier to levy, and hence was more effective than school taxation by counties. Opponents of the district tax argued that in school districts where evaluations were high because of industrial development, schools would secure large sums as contrasted with other school districts in poorer parts of the same county.[111] However, the same criticism applied all the way up the scale. The poorer counties lost funds to the richer counties when the convention reduced the state tax limit 1 mill and the taxation and education committees proposed instead local taxation for education. The convention debated and turned down the proposal of the taxation committee for special local school taxation by municipalities;[112] and its recommendation that only "property taxpayers who are qualified electors" should participate in local school taxation elections.[113] It adopted the plan of the education committee, providing for a 1 mill optional county tax for education to be levied only after an affirmative vote of three-fifths of the qualified electors voting at an election for that purpose.[114]

The convention of 1901 "is marked for what it did in the matter of educational legislation and for what it did not do."[115] Through the 3 mill tax allocation it made a constitutional guarantee to education equal to the amount of the existing appropriation for schools. This provision took the schools out of politics as they had previously struggled for this appropriation before each succeeding session of the legislature. School funds would increase automatically with the increasing wealth of the state. On the other hand the convention refused to adopt recommendations for special municipal (in addition to the 5 mill municipal tax limit) or district taxation for schools as used in other states and which was then and later one of the paramount needs of education in Alabama. The year following the adoption of the Constitution of 1901, the state superintendent of education reported that "an amendment to the constitution should be submitted allowing school districts to levy a local tax for school purposes whenever the people of the district desire it. The

---

bama Educational Association invited the convention's education committee to a panel discussion, which it held in Montgomery, on the need for school district taxation. The Birmingham *Age-Herald* carried on a crusade for school district taxation and charged the Montgomery *Advertiser* with non interest. The *Advertiser* did not show much interest in school district taxation but in an editorial on August 4, 1901, asked for increased education in order that "the state would never again go daft on such nonsense and appeals to prejudice as were so generally gulped down in the Alliance campaign." The Alabama Federation of Women's Clubs, meeting in Anniston, petitioned the convention in favor of taxation for schools by districts and municipalities. Montgomery *Advertiser,* August 27, 1901; Mobile *Register,* June 19, 1901; Birmingham *Age-Herald,* March 7, May 14, July 22, 24, 1901; *Journal of the Constitutional Convention of 1901,* 147.

[111] *Official Proceedings,* IV, 4281, 4308.

[112] *Ibid.,* I, 558, IV, 4312-4317.

[113] *Ibid.,* I, 558, II, 1372-1373.

[114] *Ibid.,* IV, 4164, 4316-4317.

[115] Weeks, *op. cit.,* 140.

schools of Alabama can never rank with the schools of other states until provision is made for local taxation."[116]

It is interesting to note that the only other constitution in Alabama's history to give a fixed percentage of the total revenue to public schools was the Radical Constitution of 1868, which gave one-fifth. Some support for a return to the highly centralized school system of the Radical period, if not for a recreation of the State Board of Education itself existed in 1901. Governor Emmet O'Neal, a leading member of the convention and a very able student of government, declared some years thereafter: "One of the wisest provisions of the Constitution of 1868 was the establishment of a State Board of Education with almost legislative powers. We ignored this [in 1875 and 1901] and every other wise provision found in the Constitution of 1868 because partisan feeling was so intense that we were unable to recognize that any just or wise measure could be found in a constitution framed by men who were not the representatives of the dominant element of the state, and whose work had been repudiated by the people at the polls and adopted only by congressional legislation."[117] He recommended the re-establishment of the "State Board of Education" in order that our entire educational system might be "harmonized and administered with greater economy and efficiency."[118]

The convention of 1901 took from the governor the power of appointment of the board of trustees of the University of Alabama and provided that "when the term of any member of the board shall expire, the remaining members of the board shall by secret ballot elect his successor."[119] Such selection was made subject to confirmation by the state senate. The governor remained an ex-officio member of the board. Before the meeting of the convention there was agitation in the press for a self-perpetuating board and the University Alumni Association passed resolutions in its favor.[120] Members of the Tuscaloosa County delegation proposed the plan in the convention as a reform measure to take the University out of politics. Recent governors, it was claimed, had made political appointments to the board to further their own ambitions. This had given the denominational colleges reason to increase their bitter attacks against the University.[121] Similar plans, it was argued, had been used in Northern universities, and Bryce Institute in Alabama had been successfully governed by a similar plan.[122] Alabama Polytechnic Institute and the Girls Industrial Institute at Montevallo petitioned the convention against any change in their management and the convention left the appointment of their boards to the governor with the advice and the consent of the Senate.[123]

---

[116] Quoted in *ibid.*, 142. In 1915, in a message to the legislature Governor Emmet O'Neal declared: "The present constitution has checked our educational growth by denying the counties and school districts the right to supplement state aid by local taxation. Every student and authority on elementary education admits that no permanently successful system of elementary education can be maintained that relies entirely upon state aid and not upon local taxation, initiative and effort." Emmet O'Neal, *Constitutional Convention: Necessity for New Constitution* (Montgomery, 1915), 13.

[117] Emmet O'Neal, *Educational Reform and a New Constitution, An Address Delivered by Governor Emmet O'Neal Before the Society of the Alumni of the University of Alabama, at Tuscaloosa, June 2, 1914* (Montgomery, 1914), 6-7.

[118] *Ibid.*, 12. In 1896, a committee of the Alabama Education Association, headed by Dr. John Herbert Phillips, petitioned the legislature to create a state board of education. *The State Must Not Stop Its Progress,* 18.

[119] *Journal of the Constitutional Convention of 1901,* 1337.

[120] Mobile *Register,* May 1, 31, 1901; Montgomery *Advertiser,* June 18, August 16, 1901; *Official Proceedings,* IV, 4253, 4255.

The independence of the Mobile County system of schools was recognized by the convention of 1901 as it had been by the convention of 1875. Against strong opposition, especially from North Alabama, the convention of 1901 retained that section of the constitution which allowed Mobile County the special privilege first granted by statute in 1854, of using liquor and certain other license taxes for the support of schools.[124] In other counties these taxes went into the state treasury.

As under the old constitution, the county tax limit was set at 5 mills, excluding the new optional school levy of 1 mill. However, another 2.5 mills was allowed under the new constitution for the building of court houses, bridges, roads, and other works of internal improvements.[125] The limit on municipal taxation was placed at 5 mills as under the old constitution, despite the fact that internal improvements had been held to a minimum and many towns and cities had defaulted on bonded indebtedness because of the insufficiency of the 5 mill tax.[126] Exceptions providing limited additional levies were made for certain cities and towns in the state. Clauses contained in the Constitution of 1875 allowing certain cities to levy an additional tax to pay interest and principal on Reconstruction debts were continued. According to the debates, cities had illegally used the tax allocated to Reconstruction debts for other purposes because of the severe tax limits.[127] The denial of relief from tax limits to counties and especially municipalities is one of the outstanding failures of the convention of 1901.

Only counties and municipalities could engage in internal improvements as the state had been denied that right since Reconstruction days; a prohibition which was re-affirmed in 1901 despite the attempts of some delegates to strike this bogie resulting from the Carpetbag era from the constitution. Advocates of internal improvements by the state pointed to the great need for road building. Convicts could then be taken from the inhumane conditions surrounding the mines and worked on the roads. They cited the ownership and successful operation of the Western and Atlantic Railroad by the state of Georgia and declared that the mere possession of the power by the state to engage in internal improvements served as a deterrent against the evil practices of the railroads.[128] William A. Handley defended the prohibition declaring that "Alabama loaned her credit a few years ago and she came out minus by millions of dollars, and she opened the State treasury way back yonder, and went into the banking business and came out minus again."[129] He believed in individual enterprise, and said that to allow state competition was dangerous legislation. John A. Rogers of Sumter County replied: "This is not dangerous legislation, except to greedy corporations."[130] The convention voted 70 to 19 to retain the prohibition against internal improvements by the state.[131] Thus on the verge of a great era of road building the state of Alabama was denied the right to build roads by her constitution.[132] If tax limits had not denied sufficient funds to counties, their limited jurisdiction would have made it impossible for them to have built a uniform system of highways.

---

[121] *Official Proceedings,* IV, 4254, 4257.

[122] *Ibid.,* IV, 4256, 4258.

[123] *Ibid.,* IV, 4253, 4262.

[124] *Ibid.,* IV, 4378-4390.

[125] *Ibid.,* IV, 4814.

[126] *Ibid.,* II, 1455, IV, 4814. J. B. Weakley, chairman of the committee on municipalities, protested bitterly against the 5 mill limit. "The object of the convention is to disfranchise the Negroes and strangle the cities," he declared. Montgomery *Advertiser,* June 7, 1901. For petitions from cities against the limitation see *Official Proceedings,* II, 1871, 2458, III, 3737.

[127] *Ibid.,* II, 1572.

The constitution makers of 1901 added a new prohibition overlooked by those of 1875. Limitations on taxation since 1875 had forced counties and cities into a large bonded indebtedness. Under the new constitution counties were limited to an indebtedness of three and one half percentum (with some exception for counties already heavily in debt) of the assessed value of property in making future debts.[133] Delegates argued that Alabama wanted no more "strangulated counties."[134] Municipalities of less than six thousand population and more than six thousand were likewise limited to an indebtedness of five and seven percentum respectively of their assessed evaluations. Again exceptions were made for certain municipalities and for certain purposes. During the course of debate many delegates argued that a debt limit was more important than a tax limit.[135]

---

[128] *Ibid.*, II, 2634-2639.

[129] *Ibid.*, II, 2632. The state lost millions in the failure of the State Bank in the 1840's.

[130] *Ibid.*, II, 2639.

[131] *Ibid.*, II, 2642.

[132] In asking for a new constitution in 1915, Governor O'Neal declared: "Under the Constitution as it now exists, the state is denied the right of engaging in internal improvements, of building a single mile of pike road or using its convicts for road improvement, or providing sufficient revenue to maintain its larger cities or towns." Emmet O'Neal, *Constitutional Convention: Necessity for New Constitution*, 12.

[133] *Official Proceedings*, II, 1448-1462, III, 3993-3994.

[134] *Ibid.*, II, 1453. The "strangulated counties" (Lee, Chambers, Randolph, Pickens and Tallapoosa) found themselves, at the close of the Reconstruction period, bankrupt as a result of endorsing bonds of railroad companies.

[135] *Ibid.*, II, 1446-1461.

The tax provisions of the Constitution of 1901 are substantially the same as those in the 1875 Constitution. Having taken form and shape in the agricultural era of the pre-1875 period, they are thus ill suited for Alabama's twentieth century semi-industrial economy. The delegates not only incorporated no new ideas on taxation in the Constitution of 1901, but continued the outmoded provision requiring the legislature to enforce uniformity in taxation, which prevents the classification of property for effective tax purposes.[136] The social, political, and economic changes of the past century have increased the demands upon government and constitutional restrictions have only served to thwart the objectives of responsible government. Tax limitations only encourage bonding as a means of hurdling the tax limitation and serve to injure credit and compel the state, county, or municipality "to pay high interest rates to bond buyers."[137] This situation is directly traceable to a distrust of the taxing and spending powers of the legislature, so evident in 1875, and which had in no sense abated by 1901.[138] Tax limitations, first written into the Alabama Constitution of 1875 as a safeguard against a re-occurrence of the extravagance and mismanagement of the Reconstruction era, hampered the growth of cities, all kinds of internal improvements, and educational development during the last quarter of the nineteenth century. The demand for relief from their "strait jacket" effects, especially strong in urban areas, was one of the reasons for calling the convention of 1901. A convention controlled by the non-urban Black Belt, the railroads, and industrialists, who were generally conservative and wished tax protection for themselves denied any adequate relief.[139] The debates show that they were able to use past Alabama history every effectively in their successful attempt to write their own interests into the Constitution of 1901.

After a study of taxation in Alabama, the Brookings Institute found that the provisions of the Constitution of 1901 which limited taxation had resulted in a "warped and distorted" revenue system for Alabama.[140] Limitations placed on the time-honored *ad valorem* tax on land and personal property forced the state to turn to license and privilege taxes which "have been continuously extended until they now constitute a conglomeration of many individual tax measures."[141] Moreover, since

---

[136] *Ibid.*, IV, 4813; O'Neal, *Constitutional Convention: Necessity for New Constitution*, 9-10.

[137] Brookings Institute, *Taxation of the State Government of Alabama*, 51.

[138] O'Neal, *Constitutional Convention: Necessity for New Constitution*, 4-5; Emmet O'Neal, *Distrust of State Legislatures, The Cause; The Remedy. An address Delivered by Governor Emmet O'Neal at the Governor's Conference, Colorado Springs, Colorado, August 28, 1913* (Montgomery, 1913), 10-11.

[139] For charges by the Birmingham *Age-Herald* that the Black Belt was dictating the tax provisions of the new constitution see Montgomery *Advertiser*, July 30, 1901.

[140] Brookings Institute, *Taxation of the State Government of Alabama*, 42-59.

[141] *Ibid.*, 59.

1901 proposed constitutional amendments to provide tax relief for a particular city, county, or school district have flooded each session of the legislature. Time and again, the electorate of the entire state has been called upon to vote on amendments to the constitution giving relief to some local jurisdiction, when the people of the whole state are little concerned and the merits of the case are not clear to them. Of the more than one hundred amendments added to the constitution since 1901, many more concern relief of localities from tax limitations than any other subject.[142]

The chairman of the committee on municipalities was J. B. Weakley, president of the League of Alabama Municipalities, and well known for his efficient management of the affairs of the city of Florence.[143] The work of the committee on municipalities was much more important than in 1875 because of the state's urban development and resulting problems. On June 24 the committee reported to the convention a well designed article on municipalities.[144] The General Assembly should have authority to divide municipalities into four classes and pass general laws for the organization and control of each class; and it might assign cities to the respective classes according to the population at the last federal census. Any city having over twenty thousand inhabitants should have the privilege of appointing a board for charter revision and the right to accept or reject the amended charter by popular vote. No public franchises should be given for a longer term than twenty years, and thirty days' advertisement must be made of all applications for public franchises. No municipal bonds should be issued except after popular vote sanctioning the issue. No railway, telegraph, telephone, heating, or lighting company should be permitted to lay tracks or erect apparatus upon the streets of municipalities without the consent of the city government.[144a]

The work of the committee was largely set aside by the convention, which made but slight advance toward grouping of municipalities or a general system of municipal government.[145] The progressive municipal plan of the committee, which was abreast of municipal planning in other states, was far in advance of the conservative thought of the majority of the convention on the subject. By the completed document, indeed the legislature is forbidden to engage in the time consuming practice of passing special acts incorporating municipalities, but the mandatory provision compelling the establishment on the basis of population of four classes of cities and towns was eliminated. The latter would have allowed the passage of general laws for each of the four classifications. The liberal proposal for the amending of city charters by popular vote rather than by act of the legislature was tabled. On the other hand, the document contains the provision giving municipal corporations control of their own streets. The convention also took strong ground on the public franchise question. Although it did not accept the suggestion of the committee limiting the terms of all grants by municipalities to twenty years, it did place a time limit of thirty years on franchises, except to railways other than street railways. This limit is one of the few progressive features of the report adopted by the convention. Local control over municipal charters was refused, but provision was made for submission of all loan proposals to popular vote.

---

[142] The 103rd amendment was adopted at an election held December 15, 1953 For those adopted up to 1946, see *The Constitution of the State of Alabama and Amendments* (Wetumpka, 1946), 90-130.

[143] Owen, *op. cit.*, IV, 1733.

[144] *Journal of the Convention of 1901*, 407.

[144a] Albert E. McKinley, "Alabama Constitutional Convention—Municipalities," *Annals of the American Academy of Political and Social Science*, XIX (January, 1902), 143-144.

[145] *Official Proceedings*, IV, 4834-4836.

The evils and inherent dangers of local legislation to representative government were recognized by the convention as one of its major problems. More than one member of the convention declared that this task was second in importance only to suffrage revision.[146] Under its chairman, Emmet O'Neal, the committee on local legislation made a thorough study of the problems which result from excessive local legislation. They found that:

> Local legislation had destroyed the harmony and symmetry of the laws, converting the local member into the sole and final arbiter of all legislation affecting his particular locality—had introduced into our law making body all the methods of intrigue, jobbery, and log rolling which had been so long the scandal of every legislative session. Through the evil effects of this system, the more important functions of general legislation had been overlooked, and by the gradual growth of custom or legislative courtesy, a local law, however unwise, vicious, or unnecessary, if supported by the local member, was rarely discussed or questioned. By the influence of this system of local legislation, the Alabama legislature had largely ceased to be a deliberative assembly, engaged in the more serious concerns of the State, but had frittered away its time in the consideration and passage of local and private bills.[147]

The report of the committee[148] acknowledged the total inadequacy of the constitutional restrictions on local legislation contained in the Constitution of 1875. That document had provided that "no local or special law shall be enacted for the benefit of individuals or corporations in cases which are or can be provided for by general law, or where the relief sought can be given by any court of this state."[149] The courts

[146] *Ibid.*, II, 1778, 1854.

[147] O'Neal, *Distrust of State Legislatures, The Cause; The Remedy*, 12. For a much longer statement of the problem by O'Neal, see *Official Proceedings*, II, 1780-1781.

[148] *Journal of the Convention of 1901*, 382-388.

[149] Article IV, section 23.

decided that the legislature rather than the judiciary should be the judge of whether a law violated this section.[150] And the requirement of the publication of a local bill twenty days before its introduction had proved worthless as a restriction. Between 1875 and 1901 the legislature passed twenty times as many local laws as general laws, and in the last legislative session before the assembling of the convention 48 general and 949 private and local laws were passed.

The members of the committee finally decided to follow the plan of twenty-seven states and absolutely prohibit certain enumerated local or private laws. Twenty-six subjects were listed on which there could be no local or special acts. They included "those matters which seemed to have consumed most of the time of the legislature, and occupied most of the space in the published acts."[151] Among subjects prohibited were the establishing of separate school districts; relieving any minor of the disabilities of non-age; changing the name of any corporation, association, or individual; incorporating a town, city, or village; granting a charter to any corporation; chartering or licensing any ferry, road, or bridge; granting divorces; providing for the adoption or legitimizing of any child; changing or locating a county seat; and establishing of separate stock districts.[152] Some nine more prohibited subjects were suggested by the committee on the legislative department[153]—in all, the convention placed thirty-one subjects in the constitution on which there could be no local legislation. A common method of evading regulations on local legislation under the Constitution of 1875 had been to pass a general law and exempt certain counties, municipalities, corporations, or persons, or to repeal a law and make similar exceptions. These ruses or methods of evading the law were prohibited in the new constitution.

As some local legislation would be necessary the committee reported in favor of granting the power to pass local laws to the courts of county commissioners, boards of revenue or other courts.[154] This method of dealing with local legislation had frequently been discussed and advocated by the press and the delegates.[155] But the committee on the legislative department made a report opposing the plan. It proposed instead that "the legislature shall pass general laws under which local and private interests shall be provided for and protected."[156] Members of the convention including Chairman William Calvin Oates of the legislative committee argued that the men who composed most county courts were inexperienced and incompetent legislators.[157] However, the real reason for opposition stemmed from the fact that it was an innovation which conservatives refused to accept. In deciding in favor of the report from the legislative committee, the convention ruled out the most effective means of relieving the legislature of the burdens of local legislation. "The failure of the Convention to provide for some measure of home rule and to include counties and municipalities in the list of subjects on which local legislation was forbidden opened a wide field for such legislation. Practically all of the local legislation passed by the legislature since that time has been made possible by these omissions."[158] In 1944, a leading student of Alabama government wrote:

---

[150] *Clarke and Daviney* v. *Jack,* 60 Ala. 272 (1877).

[151] *Official Proceedings,* I, 828.

[152] *Ibid.,* I, 829-830.

[153] *Ibid.,* II, 1777.

[154] *Journal of the Convention of 1901,* 384. The report reads: "We have sought to prevent the assumption by the State Legislature of the direct control of local affairs. The General Assembly is authorized to confer upon local courts powers of local legislation and administration, thereby not only saving the time and expense required in the passage of local acts, but also relegating these matters to the local authorities and forum, which can best appreciate and understand local necessities and demands."

[155] Mobile *Register,* February 24, 1893; Montgomery *Advertiser,* January 7, 1899, June 2, 1901; *Official Proceedings,* I, 831, II, 1776.

> The evils of local and private legislation in Alabama are obvious. Counties and municipalities have too little control over local affairs. That control has been given by the Constitution to the Legislature, which in turn has resigned it to the representative(s) from the county. While local and private legislation is of necessity important to each member of the Legislature, it is of minor concern to the Legislature as a whole. These bills receive no real consideration either in committees or on the floor of the houses, yet they represent roughly one-half of the legislation enacted by the Legislature.[159]

It is evident that the problem of local legislation was by no means solved by the convention of 1901. Of course, the problem is of such a nature that it has never been solved in its entirely for any legislative body. The local legislation section of the 1901 Constitution increased "litigation in the courts and its wise provisions have often been avoided by legislative subterfuges and devices."[160] Although the constitution defined a local law as "a law which applied to any political subdivision or subdivisions of the State," and specifically made the courts instead of the legislature the judge of whether local and private statutes were in violation of the constitution, the courts have through liberal interpretation of the restrictions on local legislation continued to allow a large volume of such legislation.[161]

The evils of local legislation had been a most important factor in lowering the caliber and effectiveness of Alabama's legislative department, which if judged by public opinion reached a new low by 1901.[162] But other factors had also contributed to the legislature's decline. As the problems of government became more complicated because of radical social and economic changes, the executive gained power at the expense of the legislative branch. The Alabama legislature had grown too large and unwieldly to be a deliberative body. And, as counties increased and the legislature became larger, legislators tended to display a more local point of view. There had been a "steady decline in the average standard of ability, independence, and intelligence of the membership"[163] of the Alabama legislature. This was partially due to the fact that as the state lost ground in its struggle for power with the federal government, the job of legislator in Alabama became less important and hence less desirable. But it was also due to the fact that there was "no longer a leisure class in the country" willing to devote itself to the service of the state. Prior to the Civil War "leading men, with settled incomes and abundant leisure, could afford to give their time and service to the State," observed Governor Emmet O'Neal. "Conditions, however, have changed. The present salary in almost every legislature is utterly inadequate. It would be better for the State to invite free service from her citizens than the miserable pittance she now offers."[164]

---

[156] *Journal of the Convention of 1901,* 741.

[157] *Official Proceedings,* II, 2020-2022.

[158] Hallie Farmer, *The Legislative Process in Alabama, Local and Private Legislation* (Bureau of Public Administration, University, Alabama, 1944), 8.

[159] *Ibid.,* 44-45.

[160] O'Neal, *Distrust of State Legislatures, The Cause; The Remedy,* 12.

[161] Article IV, sections 105, 110; Farmer, *The Legislative Process in Alabama, Local and Private Legislation,* 10-16.

Although a growing distrust of the legislature was a nation-wide phenomenon, the Carpetbag era had a profound effect on the attitude of the people toward the legislative branch. The Alabama legislature was so restricted and hedged about by constitutional prohibitions after 1875 that membership in that body was less desirable than in earlier years. After 1901, it was still less attractive. Instead of attempting to make the legislature a more efficient body, responsible to the will of the people, the convention of 1901 as that of 1875 considered that body a necessary evil which should be put in a strait-jacket. Instead of reducing, it increased the size of that body. Thus for a number of reasons the people of Alabama had moved from a position of unreserved confidence in the legislature in 1819 to one of widespread distrust by 1901. The masses were convinced that the legislature represented "the interests" rather than "the people" because of its general ineffectiveness, failure to pass laws controlling railroads and other corporations, and refusal to make needed reforms. Corporations and conservative interests controlled the legislature in Alabama at the turn of the century. They had no love for the legislature and would have liked to abolish it in order to save themselves the trouble of controlling it had that been feasible.

---

[162] Birmingham *Age-Herald,* March 7, April 17, 1901; *Official Proceedings,* II, 2223, 2258.

[163] O'Neal, *Distrust of State Legislatures, The Cause; The Remedy,* 20.

[164] *Ibid.*

There was always the possibility that control of a session might prove impossible. As Emmet O'Neal declared "a session of the legislature is looked upon as something in the nature of an unavoidable public calamity. Business becomes alarmed, industrial development and investment are checked and halted, and there is a general apprehension that the results of the legislative session, instead of being beneficial, will be injurious to the public interests. . . . While it is in session, a spirit of unrest prevails, and an adjournment is always hailed with a genuine sense of relief."[165] This condition of affairs explains the attitude of the convention of 1901 toward the lawmaking branch of the state government.

A proviso for quadrennial sessions limited to fifty legislative days was the most important new restriction in the report of the committee on the legislative department,[166] made by chairman William Calvin Oates. Alabama had had biennial sessions since 1875; annual sessions prior to that time except during the years 1846-1861 when an amendment provided for biennial sessions. The report of the committee argued that in "view of the prohibitions to be placed on the legislative power to pass local laws, there will be hereafter neither a demand nor a necessity for biennial sessions. The change is recommended on the additional ground that it will prevent hasty and ill advised attempts to repeal general laws. . . . The tendency to permanency of the legislative enactments will be greatly increased, and much expense saved to the State."[167] Bitter and long debate raged in the convention over the issue of quadrennial sessions.[168] In the first place it was an innovation never tried before in any other state. Its advocates supported it on the basis of economy and stability in government. They declared that the people were tired of so many "half baked" laws, so many enactments, repeals, and reenactments of laws. According to many of the delegates "frequent meetings were productive of evil rather than good."[169] Supporters of frequent sessions appealed to history to show that the legislative branch had been the protector of liberty and freedom for ages. One session every four years was "directly contrary to the teachings of Jefferson and Madison and all the fathers of the Constitution,"[170] one delegate declared. Another said that it would "open wide the flood gates of fraud and corruption. Our legislature is a check upon dishonest officials, it is a check upon dishonest government."[171]

---

[165] *Ibid.*, 4.

[166] *Official Proceedings,* I, 1118-1131.

[167] *Ibid.*, I, 1119.

[168] *Ibid.*, II, 2236-2299, 3146-3148. See also John Peavy Wright, The Limited Quadrennial Legislative Session of Alabama, 1-27, 67-78 (unpublished Doctoral dissertation, Harvard University, 1932).

[169] Montgomery *Advertiser,* September 8, 1901. "Alabama has had too much politics; it has been cursed with politics," declared the Birmingham *News,* July 17, 1901.

[170] Montgomery *Advertiser,* August 23, 1901.

Using the debates, one can prove that almost every economic group or class in Alabama supported or opposed the plan. "I am speaking here in the interest of the horny-handed sons of toil," declared one delegate in support of quadrennial sessions. "They are the men who are not able to be here as representatives upon the floor of the Legislature to put through pet measures."[172] Another delegate said that "it may be pleasing to the vested interests, it may be pleasing to organized capital, and it may prevent the people from reaching and checking the rapacity and greed of Corporations, but I tell you it will not be received with favor . . . by the horny handed masses of this great commonwealth."[173] An editorial in the Montgomery *Advertiser* said that the railroads were supporting it because they were "afraid of legislative regulation."[174] A letter to the editor declared that the people were to "be rocked asleep and their attention . . . withdrawn as far as possible from their legislative interests in order that certain other interests may not be disturbed."[175] There can be little doubt that conservative business interests supported the quadrennial plan. It also seems certain that because of general distrust and lack of confidence in the legislature, it was supported by a majority of the people of Alabama. By a vote of 67 to 55 the convention provided for quadrennial sessions.[176]

The convention of 1901 also provided for quadrennial elections, readopted all restrictions placed on the legislative department in 1875, and added others, including clauses limiting the duration of legislative sessions, regulating in minute detail each step in legislative procedure, incorporating much ordinary legislation in the constitution, prohibiting legislation on certain subjects, and increasing the legislative power of the governor.[177] The people were tired of so many elections and, since there was no longer any "fear of interference from Federal authorities,"[178] the convention provided that the state election should be held in November with the federal election.

Comparatively few changes were recommended in the report of the committee on the executive department,[179] and few were made by the convention. The powers of the governor were increased. In addition to his veto, he was given the power to suggest amendments to a bill, which had either to be accepted without change by the legislature or carried over his veto.[180] His right to veto individual items in an appropriation bill was continued. The office of lieutenant-governor was created[181] and the commissioner of agriculture had the word "industries" added to his title, a return to the title of that official under the Radical Constitution. The terms of all executive officers were extended from two to four years to correspond with the new election provisions, and elaborate provisions were made for the gubernatorial succession. The attorney-general, secretary of state, and state auditor were to constitute a board of pardons advisory to the governor, an aid which the overworked governor had needed for years. It was provided that the governor was not eligible to the office of United States Senator during or for one year after the end of his term. This section was motivated by animosity for Governor Johnston, who at the end of his second term opposed Senator Morgan.[182] Sheriffs were disqualified from holding office for more than one term in succession and were made subject to impeachment if prisoners were taken from them and lynched. The questions of whether a sheriff should be allowed to serve more than one term in succession and the control of the governor over sheriffs in lynching cases were two of the hardest fought and most controversial issues of the whole convention. Ex-Governor Jones introduced and led the fight for a provision that the governor should be able to suspend a sheriff charged with negligence in a lynching case while his trial was pending in the courts.[183] He pointed to the large number of lynching cases in Alabama and said that this provision was the only way to reduce the number. The convention passed the provision giving the governor power to suspend a sheriff while his trial was pending; but pressure from the Sheriffs, Clerks, and Registers Association, which held a meeting in Montgomery for that purpose forced the convention to rescind its action.[184] These men also brought pressure on the convention to reject the provision against consecutive terms, but were not successful. Some members of the convention predicted the defeat of the constitution when submitted because the

---

[171] *Official Proceedings,* II, 2293.

[172] *Ibid.,* II, 2297-2298.

[173] *Ibid.,* II, 2295-2296.

[174] Montgomery *Advertiser,* August 1, 1901.

[175] *Ibid.,* July 21, 1901.

[176] *Official Proceedings,* II, 2299-2300. Quadrennial sessions proved largely a failure and many special sessions of the legislature were necessary. Alabama returned to biennial sessions by amendment of the constitution in 1939. William Vernon Holloway and Charles W. Smith, *Government and Politics in Alabama,* 9.

[177] *Official Proceedings,* I, 1118-1131, IV, 4690-4702.

[178] *Ibid.,* II, 2247. Since 1875, the state election had been held on the first Monday in August.

[179] *Journal of the Convention of 1901,* 213.

[180] *Official Proceedings,* II, 1399; Emmet O'Neal, *Strengthening the Power of the Executive. An Address Delivered by Governor Emmet O'Neal at the Governor's Conference, Spring Lake, N. J., September 12, 1911,* 5.

[181] The provision for a lieutenant governor was a return to the Radical Constitution of 1868. However, the office was re-created as a direct result of the situation which resulted when Governor-elect William J. Samford was mortally ill late in Johnston's administration. As no president of the new senate had been elected there was no legal successor. Samford lived to take office, but died on June 11, 1901, while the Alabama constitutional convention of 1901 was in session.

[182] Montgomery *Advertiser,* June 12, 14, 15, 1901.

[183] *Ibid.,* July 16, 20, 1901; Mobile *Register,* June 23, 1901; *Official Proceedings,* I, 887-890.

[184] Mobile *Register,* June 28, 1901; Montgomery *Advertiser,* August 15, 1901.

sheriffs of the counties and their organizations would oppose it.[185] Finally the convention provided that the governor might order impeachment proceedings before the Supreme Court against a sheriff for negligence of duty in a lynching case, but the sheriff should hold his office until pronounced guilty by the court.[186]

The changes made in the judiciary department by the convention were chiefly verbal and administrative rather than organic. The convention followed the report of the committee on the judiciary in these changes.[187] After a very long and hard fight, county solicitors were made elective by the people instead of being appointed by the legislature.[188] The term of solicitor was changed from six to four years. Limitations on the number of chancery and circuit divisions into which the state was divided in 1875 were removed by the convention. The creation of new divisions was left to the legislature. In general the judiciary article was rewritten with the object in view of giving more elasticity to the judicial system by enabling the legislature to extend or modify the system as might be necessary to meet the growing needs of the state.

The amending process was made easier in the new constitution. The two-thirds majority of the legislature required to submit an amendment to the vote of the people was changed to a three-fifths majority.[189] In order to overcome the greatest deterrent to the amending process under the Constitution of 1875, it was provided that an amendment be ratified by a majority of those voting on the amendment. The Constitution of 1875 had required that it receive a majority of the whole vote cast in the election. Clauses in Alabama's Constitution from the Reconstruction era extending state citizenship to all persons born or naturalized in the United States and denying the principle of secession were omitted in the new constitution.

In its general revision of the constitution, the convention of 1901 acted with the utmost conservatism for two reasons. In the first place it was dominated by the conservatives. And in the second place, these conservatives were able to convince other delegates that any change of a controversial nature would endanger ratification of the suffrage decision. It was the old story of using the Negro issue to prevent change or reform. The convention refused to provide for an elective railroad commission with mandatory powers, discarded all except a fragment of the progressive report on municipalities, made no reforms in regard to child labor or convict leasing, provided for a more severe state tax limit, and gave counties and municipalities little relief from tax limits. The convention made some progress in education and refused to adopt the unjust and unconstitutional proviso for division of the schools funds according to the amount of taxes paid by each race. Here, however, the decision was made with its effects on suffrage revision in mind. It provided for infrequent elections and embarked the state on a new and untried course in regard to quadrennial sessions. It strengthened the power of the governor and continued the process begun in 1875 of putting the legislature in a strait-jacket. Fundamentally, except in regard to the suffrage, the Constitution of 1901 was a re-adoption of that of 1875. "The Constitutional Convention of 1901 was called for the paramount purpose of reforming the suffrage and removing from our electorate the menace of an ignorant and purchasable vote," declared Governor Emmet O'Neal in asking for a new constitution in 1914. "Little consideration was given to matters of reform, and hence the Constitution of 1875 which had been framed to meet conditions which can never again exist, was practically readopted."[190]

---

[185] Mobile *Register*, June 30, 1901.

[186] Prior to 1901, there was no provision for the removal of sheriffs in such cases. According to Emmet O'Neal, sheriffs were removed under this provision and much progress made against lynching. Certainly, it was a most important provision. O'Neal, *Strengthening the Power of the Executive*, 9-10.

[187] *Journal of the Convention of 1901*, 808.

[188] Montgomery *Advertiser*, August 9, 17, 25, 1901.

[189] *Journal of the Convention of 1901*, 486.

Certainly, the convention had not taken the advice of the Birmingham *Age-Herald* when it asked that "room to grow in . . . be the first rule of the convention" in writing the new constitution.[191] No pervious Alabama constitution had been so rigid and so permeated with statuatory enactments as that of 1901. It was really a code of statuatory laws rather than a framework of fundamental principles which could be interpreted to changing needs. Neither did the convention take the *Age-Herald's* counsel when it said "The shorter and simpler that enactment is the longer and better it will wear. Few other countries indulge in written constitutions, chiefly because they lack elasticity."[192] The Alabama Constitution of 1901 is not only inelastic but very lengthy.

---

[190] O'Neal, *Educational Reform and a New Constitution,* 6. For similarities between the constitutions of 1875 and 1901, see James J. Mayfield, *Constitutions of 1875 and 1901, Paralleled, Annotated and Indexed,* 1-177.

[191] Birmingham *Age-Herald,* April 25, 1901.

[192] *Ibid.,* January 20, 1901.

CHAPTER XX

RATIFICATION AND LIMITED SUFFRAGE UNDER THE NEW CONSTITUTION

As already noted, the convention honored the pledge contained in the enabling act and provided for the submission of the new constitution to popular vote. The Virginia convention, meeting simultaneously with Alabama's, refused to honor the pledge for submission in that state and the new constitution was proclaimed.[1] Since the Alabama constitution was the only Southern disfranchising constitution submitted for popular approval,[2] the question arises as to why it was submitted. The answer is to be found in repeated pledges of submission made by the state Democratic party organization in order to secure a convention (including Governor William J. Samford's pledge) and the intense sectional feeling on the issue between North and South Alabama. Since 1861, when South Alabama refused the demand of North Alabama for a popular vote on secession and the Constitution of 1861, the issue of ratification of any new constitution by the people had become a major one in the state. South Alabama leaders, once discredited as a result of decisions made in 1861, dared not thwart popular demand for submission in 1901. After all, South Alabama's Black Belt had provided the necessary majority for victory on other occasions and might do so again. On August 22, 1901, the Montgomery *Advertiser* reported that the Black Belt "will roll up one of those old-time Democratic majorities for the new Constitution."

Much depended on whether those Democratic leaders in the convention who had opposed the suffrage article would give the new constitution their whole-hearted support. Some of the state's most influential leaders had not only voted against the grandfather clause but when that clause had not been eliminated they voted against the whole suffrage article.[3] In the closing days of the convention, most of these leaders pledged their support to the new constitution,[4] but their avowed opposition to the subterfuges of the suffrage decision encouraged opposition leaders in the state and aroused additional popular resistance to the new document.[5] The Atlanta *Constitution* thought the situation in Alabama furnished the "basis of a good-sized storm" in the campaign for popular sanction.[6] In addition to opposition from dissident Democrats, the constitution would be opposed by Populists and Republicans.

---

[1] Ralph C. McDanel, "The Virginia Constitutional Convention of 1901-1902," Johns Hopkins University *Studies in Historical and Political Science, Series* XLVI, No. 3, 120-129. See also Albert E. McKinley, "Two New Southern Constitutions," *Political Science Quarterly,* XVIII (September, 1903), 507-509.

[2] In North Carolina (1900) and Georgia (1908) disfranchising amendments were adopted by popular vote. Every Alabama constitution has been submitted for popular approval since 1868, when the submission of the Radical Constitution was required by the Reconstruction Acts. Submission had become "prevailing practice" much earlier than 1868 in many of the states. See Walter F. Dodd, *The Revision and Amendment of State Constitutions* in Johns Hopkins University *Studies in Historical and Political Science,* No. 1 (Baltimore, 1910), 64-67.

Governor William D. Jelks proclaimed November 11, 1901, election day for the submission of the constitution to the people. On September 3, 1901, the Democratic State Committee met in Montgomery and resolved to "aid in every possible way the ratification of the new constitution."[7] The issue arose as to whether the ratification of the new constitution should be made a party issue. Advocates of such a policy pointed out that a Democratic legislature passed the enabling act, a Democratic State Convention nominated most candidates, and the Democrats of the state elected 141 of the 155 delegates who wrote the constitution. However, Chairman Robert J. Lowe, an opponent of the suffrage article in the convention, was opposed to making the constitution a party issue, because "so often the Democratic State Committee is accused of dictating to the Democrats of Alabama."[8] The decision would be unpopular and therefore might prevent adoption, he argued. Lowe's resolution, which commended "the new constitution to the impartial consideration of the voters of the state" instead of making it a party issue, was adopted.[9] Bibb Graves of Montgomery, who later became a member of the opposition, was opposed to any resolution of endorsement.[10] The committee set up a campaign committee of fourteen, of which United States Representative Oscar W. Underwood of Jefferson County, spokesman for Alabama industrialists and a staunch defender of the South's disfranchising movement in Congress,[11] was made chairman. The selection of Underwood was a concession to North Alabama, where the new constitution was known to be less popular than in the southern part of the state.[12] Jefferson County, for instance, had a majority of only twenty votes for calling a constitutional convention and was the home of the anti-convention Democrat Joseph F. Johnston. "The selection of Oscar W. Underwood as chief campaign manager will be a tower of strength," said the Birmingham *Age-Herald*. "He is very popular in all parts of the state and here at home he can win over many voters."[13] W. W. Brandon of Tuscaloosa, later governor, and Congressmen Henry DeLamar Clayton of Eufaula and John L. Burnett of Gadsden, were also members of the committee.[14]

---

[3] Among the nineteen votes cast against the whole suffrage article were those of William C. Oates, Frank S. White, and George P. Harrison. Thomas Goode Jones, Robert J. Lowe, and thirty-seven other delegates were absent and not voting. *Official Proceedings,* III, 3848-3849.

[4] *Ibid.,* IV, 4919-4948; Birmingham *Age-Herald,* September 3, 1901.

[5] Mobile *Register,* September 4, 1901; Birmingham *Age-Herald,* September 19, 1901.

[6] George P. Harrison quoting the Atlanta *Constitution, Official Proceedings,* IV, 4927.

[7] Birmingham *Age-Herald,* September 5, 1901.

[8] Minutes of the Democratic State Committee, September 3, 1901.

[9] *Ibid.*

[10] Graves expressed the fear that the Black Belt would inevitably lose representation in the legislature if the Negro were disfranchised. Minutes of the Democratic State Committee, September 3, 1901.

[11] *Congressional Record,* XXXIV, 56 Cong., 2 Sess., 557-558.

The campaign committee chose Birmingham as campaign headquarters and decided that it would sponsor "a campaign of education." "There will be no personalities indulged in and our slogan will be 'White supremacy! Honest elections! and the New Constitution! One and inseparable!' "[15] The committee decided to draft an address on the merits of the new constitution. Delegates reported on conditions in the different counties, and a campaign was planned in each county according to its own special needs and pecularities.

As the most important controversy over the constitutional convention had been within the Democratic party, so was the main fight for ratification. Although the Republican party organized against the constitution, its opposition could not by any chance defeat ratification. The anti-convention Democrats, led by ex-Governor Joseph F. Johnston, organized for the purpose of making an active campaign against ratification.[16] Ex-Congressman Charles Miller Shelley, who had not actively opposed the calling of the convention, was made chairman of their campaign committee. Radicals such as ex-Congressman William H. Denson and mild liberals who had identified themselves with the common man's cause, including Johnston and Shelley, combined to oppose the constitution.[17] Ex-Congressman Jesse Stallings joined the ranks of those opposed to ratification. Although sincere in their opposition to the disfranchisement of whites, most of the opposition leaders also believed the issue one on which they might win future political victories.[18] Shelley organized a committee of nineteen to fight the constitution. Among these were Bibb Graves of Montgomery, later governor,[19] and John Lee Long, a member of the constitutional convention from Greenville.[20] This committee also set up its campaign headquarters in Birmingham and began a vigorous campaign against ratification.

---

[12] Birmingham *Age-Herald,* September 3, 5, 1901. Congressman Sidney J. Bowie, who, although not a member of the convention, had given notable support to the majority plan on the suffrage through articles in Alabama newspapers, was also considered for the chairmanship of the campaign committee. Minutes of the Democratic State Committee September 3, 1901.

[13] Birmingham *Age-Herald,* September 3, 1901.

[14] *Ibid.,* September 18, 1901; Mobile *Register,* September 18, 1901.

[15] Birmingham *Age-Herald,* September 18, 1901.

[16] *Ibid.,* September 15, 1901; Mobile *Register,* September 15, 16, 1901.

[17] Moore, *History of Alabama,* 658.

[18] Although defeated for the Senate in 1900 by John T. Morgan, Johnston still had a large following and was politically ambitious. Shelley and Stallings were both unsuccessful gubernatorial candidates in 1900.

Negro leaders understood that the new constitution would disfranchise almost all of their race. On September 25, they held a convention in Birmingham for the purpose of preserving "the rights of colored citizens" in the forthcoming election.[21] More than one hundred prominent Negroes were present from all over the state. A. N. Johnson, editor of the Mobile *Press,* a Negro newspaper, presided over the meeting. The Negroes appealed to the poor whites to vote against ratification. They said the new constitution did not contain "a single guarantee for honest elections" and warned the "unfortunate white classes that they were being used as instruments to effect their own political destruction. . . . [as] Democrats would suppress white Republican and Populist votes as quickly as Negro votes." If the new constitution were adopted they threatened a mass migration to states "where the rights of manhood will be respected." They agreed to remain away from the polls on the day the new constitution was voted on, as their votes would not be counted, and to seek redress for their grievances in the United States Supreme Court. In a resolution they disclaimed any faith in the Johnston-Shelley Democrats or the Republican party.[22]

Very few of the white opponents of the constitution were willing to defend the Negro's rights. "I am not speaking for the Negro in this campaign," declared Joseph F. Johnston. "I am speaking for the white man, who can vote now because the old constitution said so, but next year only the Lord and three registrars will know what he can do."[23] Willis Brewer, Democratic congressman from the Black Belt (1897-1901) and Alabama historian, was an exception. He took no active part in the campaign, but denounced the new Constitution because it took from the Negro "the political rights of a citizen," although he still has to bear the "burden of citizenship."[24]

[19] The Minutes of the Democratic State Convention, September 3, 1901, suggest that Graves' opposition came from his fear of eventual loss of Black Belt representation in the legislature under the new constitution.

[20] Montgomery *Advertiser,* October 1, 1901; Birmingham *Age-Herald,* October 1, 2, 1901.

[21] Montgomery *Advertiser,* September 26, 1901; Birmingham *Age-Herald,* September 26, 27, 1901. Booker T. Washington did not attend the meeting.

[22] Birmingham *News,* September 26, 1901.

[23] Speech of Joseph F. Johnston in Montgomery, Montgomery *Advertiser,* November 10, 1901. In the Knox-Stallings debate on the Constitution in Opelika, Stallings became much annoyed at the applause which he received from about 100 Negroes in an audience of 600. Montgomery *Advertiser,* October 15, 1901.

[24] They "pay taxes, work the roads, do military duty and are subject to the posse comitatus of the sheriff," said Brewer. Montgomery *Advertiser,* October 26, 1901.

President McKinley's death occurred shortly after the Alabama con vention came to an end. Many people in Alabama mourned his los because he was known to be friendly to the South and to the movemen for disfranchisement of the Negro. Much speculation existed as to th new President's position. The people of the state applauded Theodor Roosevelt's appointment of Thomas Goode Jones, Democrat and constitutional convention delegate, to a federal judgeship.[25] Later in the campaign, however, Roosevelt entertained Booker T. Washington at hi now famous dinner in the White House. This event heightened racia tension in the state and even forced some undecided North Alabam weekly newspapers into a position of ardent support for the new constitution.[26] Ratificationists welcomed this unexpected aid in their "campaign for white supremacy."

Advocates of ratification asked approval of the new constitution because of additional support for education, a reduced constitutional ta limit, the provisions for a popular vote on bond issues and the election o solicitors, restrictions on local and private legislation, quadrennial sessions of the legislature, an easier amending process, and the abolition o unnecessary elections and useless courts.[27] But these issues receive scant attention when compared to the emphasis placed on the suffrag article by all parties. Everywhere men were interested in their right t vote. With good cause, the question most often asked speakers for th new constitution was whether the right of the "poor whites" to vot would be denied them as enemies of the new constitution claimed.[28] Th suffrage article was extremely involved and complicated. There was th temporary plan which allowed soldiers and their descendants and men o "good character" to register to vote before January 1, 1903, and th permanent plan with its many provisions, among which were the property, educational, employment, and poll tax clauses. Education wa necessary in order to cast an intelligent vote on the suffrage plan an anti-ratificationists exploited its intricate provisions to the fullest.[29] They raised the "old state populistic cry of you are going to disfranchise white men."[30] They centered their attack on the claim that the grandfather clause would be declared unconstitutional and all those registered under the temporary plan thus disfranchised. Again and again anti-ratificationist speakers cited Morgan, Pettus, Oates, Jones, and others to the effect that the grandfather clause was unconstitutional. If the convention had faith in the grandfather clause, why had they made provision for "patching up" the suffrage article in the advent of an adverse court decision, opponents of the constitution asked.[31] They said that the registration boards would perpetrate frauds even greater than those under the old "counting in" and "counting out" system.[32] "No machine more dangerous to the liberty or more subversive of the fundamental principles of a democratic republican government can be conceived [declared Johnston] than a board appointed by a central power to decide who shall and who shall not vote in any county. Other devices are infant abortions compared with this leviathan of irresponsible and unregulated power."[33]

---

[25] Birmingham *Age-Herald,* October 15, 17, 1901; Montgomery *Advertise* October 16, 18, 20, 1901. However, criticism arose when it became known th Booker T. Washington was responsible for Jones' appointment. Bond, *op. ci* 210. For Washington's part in Jones' appointment, see Letter of Booker T. Washington to Theodore Roosevelt printed in Bond, 209.

[26] "Roosevelt has planted more cussedness in the race than can be gotten o except by disfranchisement," declared the Lafayette *Sun.* Quoted in Montgome *Advertiser,* October 25, 1901. "The action of President Roosevelt in inviting Book T. Washington to dine with him is an insult upon every white man in the South said constitutional convention delegate L. E. Brooks of Mobile. Mobile *Registe* October 27, 1901.

[27] Speeches of ratificationist leaders, Montgomery *Advertiser,* October 17, 1 November 3, 8, 9, 1901; Birmingham *Age-Herald,* October 3, 4, 18, 1901; Mob *Register,* October 27, November 8, 10, 1901; Address of Democratic State Campaign Committee to the People, in Montgomery *Advertiser,* November 8, 190 Address of Montgomery County Democratic Campaign Committee to the Peop Montgomery *Advertiser,* November 9, 1901.

[28] Montgomery *Advertiser,* October 15, 1901.

Anti-ratificationists reminded South Alabama leaders that in 1861 they did not ask whether a prospective soldier had property, education or even "good character." "I got in [the Confederate Army] without anyone inquiring into my character or whether I or my wife had any property, and I think I ought to be good enough to vote now without any question,"[34] protested one opponent of the Constitution.

Advocates of ratification argued that the suffrage provisions of the new constitution were fair and were not experimental.[35] The registration plan was a part of many Southern constitutions; the hereditary voting provision was contained in the constitutions of Louisiana and North Carolina. Almost every state in the United States had at one time or another a constitution with educational or property qualifications for voting, they maintained. The new constitution would not disfranchise any white man.[36] Every white man in Alabama could register before January 1, 1903, either under the soldiers and descendants clauses or the "good character" clause of the temporary plan. Senator Benjamin

---

[29] Speeches of anti-ratificationist leaders, *ibid.*, October 15, 20, November 6, 7, 10, 1901; Mobile *Register*, November 2, 5, 7, 10, 1901.

[30] Montgomery *Advertiser*, October 25, 1901, quoting the Ashland *Standard*.

[31] Montgomery *Advertiser*, October 13, November 10, 1901. The Birmingham *Age-Herald*, September 30, 1901, agreed with the anti-ratificationists that the grandfather clause might be unconstitutional, but declared, "We are forced to it by 'the law of necessity,' a law not amenable to any court."

[32] Birmingham *Age-Herald*, October 4, November 2, 1901; Montgomery *Advertiser*, October 20, November 6, 10, 1901.

[33] Birmingham *Age-Herald*, September 19, 1901.

[34] Montgomery *Advertiser*, November 10, 1901.

[35] *Ibid.*, October 15, 16, 1901.

[36] *Ibid.*, October 16, 1901; Birmingham *Age-Herald*, September 29, 1901.

R. Tillman of South Carolina joined the campaign by sending Underwood a telegram declaring that "no white men were disfranchised" by the South Carolina Constitution of 1895.[37] Senator Pettus said in speeches favoring ratification of the new constitution that the soldiers and descendants clauses were "designed especially for the people of north Alabama who are all descendants of soldiers."[38] Many of the most powerful ratificationist speakers were sent into North Alabama in an effort to convince the "poor whites" that they would not be disfranchised.

Above all else the ratificationists based their campaign on "white supremacy" and the moral issue of an honest ballot. As one newspaper simply expressed it, the new constitution "is a clean white man's document and should be approved."[39] Emphasis was placed on the issue of Negro disfranchisement and speaker after speaker declared that no white man would be denied the ballot. Again and again speakers compared the campaign to that of 1874, when the Democrats regained control of the state under the leadership of George S. Houston.[40] Much of the literature of that earlier campaign, as well as the old and new constitutions, were reprinted in the newspapers and the people were told that "white supremacy" was as much at stake as in 1874.[41] The whites had maintained their supremacy since Houston's day by "force and fraud"; but under the new constitution the Negro would be legally disfranchised and the honest electorate of the pre-1867 period would return, maintained many a speaker. Hilary A. Herbert and others declared that the disfranchisement of the Negro would even bring a revival of Alabama's two party system of the earlier period.[42] "The determination that the intelligence of the state shall control its destinies is not a declaration against the colored race," contended the Montgomery *Advertiser,* "but an avowal of the intention of the white race to rule in the interest of all the people."[43]

The anti-ratificationists maintained the constitution had been written by the "bosses" and that the leaders of the "convention were railroad lawyers."[44] "A majority of the delegates to the constitutional convention were railroad attorneys and the interest of the railroads was cared for," declared ex-Congressman Stallings at Opelika.[45] As evidence that the convention was sympathetic with corporations, they cited the general conservatism of that body and the fact that in spite of the numerous petitions from the people the convention had not made the office of railroad commissioner a constitutional one elective by the people.[46] In North Alabama the anti-ratificationists pointed out that "the work of the convention was dictated by the corporate influences and the Black Belt."[47] The Black Belt with the aid of the railroads had established a select electorate, defeated equal representation in the legislature for North Alabama,[48] and would now force the new constitution on North Alabama by the old practice of "counting in" the Negro vote in the Black Belt. Opponents of the Constitution said that the action of the convention in extending the tenure of all sheriffs in the state two years was nothing but a bribe of the most important election official in each of the sixty-six counties of Alabama.[49] Since a man would be wealthier by $1.50 if he did not vote, Johnston called the poll tax, "the bribe which is offered to every man to stay away from the polls."[49a]

---

[37] Montgomery *Advertiser,* October 16, 1901.

[38] *Ibid.,* October 16, 1901; Birmingham *Age-Herald,* October 15, 1901.

[39] Montgomery *Advertiser,* September 8, 1901, quoting the Opelika *Post.*

[40] Montgomery *Advertiser,* October 16, 17, 19, November 6, 10, 1901; Mobile *Register,* November 8, 1901.

[41] John B. Knox said in a speech in Birmingham, "The great object which we have undertaken is to maintain white supremacy—not by force but by law." Birmingham *Age-Herald,* October 18, 1901. "All white men in Alabama who believe in the supremacy of the white race should vote for the new constitution," declare United States Senator Edmund W. Pettus. Montgomery *Advertiser,* October 1 1901. The editor of the Montgomery *Advertiser,* October 8, 1901, thought tha "honest elections, white supremacy, and free schools," were the most importa features of the new constitution. "The contest over the new constitution is not fight of Democrat vs. Democrat, or Republican vs. Democrat, but a fight for hone elections, good schools, and for white supremacy," said the New Decatur *Advertiser.* Quoted in Montgomery *Advertiser,* September 11, 1901.

[42] Montgomery *Advertiser,* October 16, 1901.

[43] *Ibid.,* September 27, 1901.

The Negroes themselves declared that adoption of the constitution was a foregone conclusion. "What have the white men of Alabama ever cared about opposition to any political rascality they wanted to carry through," asked the Negro editor of the Mobile *Press*. "When men can manufacture any sort of majority they need by the simple process of addition and silence, the talk about the popular vote becomes farcial in the last degree."[50] Shelley challenged Underwood to submit the question of ratification to a white primary of Democrats so that the Black Belt could not "roll up" its Negro vote for ratification.[51] Underwood referred him to the Democratic State Committee, but added that there would be no way to keep white Republicans and Populists from voting in the primary.[52] A North Alabama voter wrote the editor of the *Age-Herald*, who was soliciting questions on the new constitution, as follows:

---

[44] *Ibid.*, September 19, October 13, 15, 18, November 10, 1901; Birmingham *Age-Herald*, October 1, 2, 1901. "The chairman of the convention was a railroad attorney, and the chairman of the committees were employed by the railroad companies, and they were chained to the corporate interests," said ex-Congressman William H. Denson in a speech in Montgomery. Montgomery *Advertiser*, October 13, 1901. "They [the ratificationists] attack me personally to cover up the corporations and their influence in the late convention," maintained Shelley, chairman of the anti-ratificationist campaign committee. Birmingham *Age-Herald*, October 6, 1901.

[45] Montgomery *Advertiser*, October 15, 1901.

[46] *Ibid.*, October 13, November 9, 1901.

[47] *Ibid.*, October 13, 17, November 10, 1901.

[48] The Birmingham *Age-Herald*, which had bitterly demanded just representation for North Alabama before and during the convention, accepted the new constitution because it was superior to the old, and hoped for an equitable apportionment after 1910. See issue of October 7, 1901, for a discussion of the problem.

[49] Birmingham *Age-Herald*, October 2, 6, 1901; Montgomery *Advertiser*, October 13, 1901. The ratificationists replied that their tenure had been extended to make all offices coincide under the new quadrennial system.

[49a] Montgomery *Advertiser*, November 10, 1901.

[50] Quoted in Montgomery *Advertiser*, September 26, 1901.

> What are we in the white counties to understand by the statement 'that no matter what the white counties may do the Black Belt counties will roll up the usual majorities upon the new constitution?' Is this majority to be secured by the old methods of fraud which have been practiced for years? Are we in the white counties to understand as white men that we are to have a constitution forced upon us by the Negro vote of the black counties? The answers to these questions will help us in the mountains among the 'hill billies.'[53]

Reuben F. Kolb, whose politics since his last defeat in 1894 had been inconsistent, took the stump in favor of the new constitution.[54] Superintendent John Abercrombie, Dr. J. H. Phillips, most of the county superintendents and other educational forces in the state openly and enthusiastically worked for the new document because of the new article on education.[55] Although they had failed to secure local district taxation for schools, the three mill state tax appropriation and other features made its educational provisions much superior to the old.[56] Ministerial associations and the *Alabama Baptist* endorsed the new fundamental law.[57] Organized labor was divided. According to the Montgomery *Advertiser*, the Birmingham *Labor Tribune* favored the constitution, but the Bessemer *Workman* was in opposition.[58] Many miners in the Birmingham area were against the new constitution because they feared it would cause the Negroes to leave the unions and become "strike breakers."[59] Although many of them had been critical of the convention and its decisions while in session, most newspapers now favored the constitution. Two dailies, however, the Democratic Mobile *Item* and the Republican Birmingham *Times*, were in opposition.[60] The Mobile

---

[51] Birmingham *Age-Herald*, October 5, 1901; Montgomery *Advertiser*, October 11, 13, 1901.

[52] Montgomery *Advertiser*, October 15, 1901.

[53] Birmingham *Age-Herald*, October 4, 1901. In the Black Belt, anti-ratificationists argued that the new constitution would not guarantee white supremacy, since the census of 1900 showed that because of the preponderance of the Negro nine Black Belt counties had more literate Negroes than whites.

[54] Montgomery *Advertiser*, October 26, 1901; Mobile *Register*, November 6, 1901.

[55] Montgomery *Advertiser*, October 13, 16, 17, 1901.

[56] *Ibid.*, October 18, 1901; Birmingham *Age-Herald*, September 30, 1901.

[57] Montgomery *Advertiser*, September 27, October 25, 1901.

[58] *Ibid.*, October 11, 17, 18, 25, 1901.

[59] *Ibid.*, October 5, 17, November 1, 1901.

[60] *Ibid.*, September 13, 28, October 8, 1901; Birmingham *Age-Herald*, October 15, 1901. The Montgomery *Journal*, for years a pro-Johnston newspaper, finally gave its support to the constitution. See Montgomery *Advertiser*, October 5, 1901.

Press, a Negro newspaper, was the spokesman of the Negroes against ratification.[61] The Columbia *People's Advocate,* one of the few remaining Populist papers in the state, fought the new constitution.[62] Some North Alabama and Wiregrass weeklies were opposed; others "straddled the issue."[63] However, the North Alabama "lily white" Republican Huntsville *Tribune* endorsed the new document. "When we came into this world it was a white man's government, [declared the editor] when we go out we want to leave the conditions of government as near as possible as we found them. The largest practical step in that direction is the ratification of the constitution as now submitted, and without qualifications, apologies, excuses, or explanations, criticisms, or 'buts' we are for it."[64]

As November 11, the day set by Governor Jelks for the vote on ratification, approached, the tempo of the campaign increased. John B. Knox, R. M. Cunningham, W. W. Brandon, George P. Harrison, J. Thomas Heflin, J. B. Graham, Henry D. Clayton, William A. Handley, and John Hollis Bankhead made speeches almost daily in favor of ratification. Ex-Governor Oates[65] and Senator Pettus spoke often for the constitution, but Senator Morgan remained out of the state during the campaign. After spending the summer at Warm Springs, Georgia, Morgan returned to Washington, D. C., without breaking the silence which he had maintained since the convention refused to follow his advice on the suffrage. Since he was the most influential leader in securing the call of the convention, much speculation existed as to his position on the new constitution and the effect of his silence on ratification.[66] However, during the last week of the campaign, Morgan went on record in favor of the new constitution.[67] Governor Jelks took an active part in the effort to secure ratification and all the state's congressmen advocated its adoption.[68] Meanwhile, Joseph F. Johnston, William H. Denson, Jesse

---

[61] Montgomery *Advertiser,* September 26, 1901.

[62] *Ibid.,* September 8, 1901.

[63] *Ibid.,* October 17, November 6, 1901.

[64] Quoted in *ibid.,* September 11, 1901. The *Tribune* thought the exclusion of the Negro voter the only hope of the Republican party and declared, "We are going to join the rescue crew even if we run up against the dictation of the party to which we belong." Quoted in *ibid.,* September 3, 1901.

[65] In a letter of September 30, 1901, to Underwood, Oates recounted his large part in making the Constitution of 1875 and his greatly reduced influence in the convention of 1901, but pledged his active support to the new constitution. Letter printed in *ibid.,* October 3, 1901.

[66] Birmingham *Age-Herald,* October 15, 1901; Mobile *Register,* November 6, 1901.

[67] Morgan wired Underwood: "I hope the people will ratify the constitution. I am not opposing it, nor have I said anything to prevent its adoption." Montgomery *Advertiser,* November 6, 1901.

[68] *Ibid.,* October 18, 1901. Ex-Governor Thomas G. Jones took no part in the campaign as he had been appointed United States district judge by Theodore Roosevelt.

Stallings, Charles M. Shelley, Bibb Graves, John Lee Long, and other dissident Democrats spoke almost daily against ratification. Populist and Republican members of the convention and some Republican postmasters took the stump in opposition to the new document.[69]

On November 11, the new constitution was ratified by a vote of 108,613 to 81,734.[70] The total vote of 190,347 on the ratification issue, as compared with 115,810 on the issue of calling a constitutional convention, showed the increased interest aroused over the suffrage provisions of the new constitution. Nine counties that voted for the convention now voted against ratification; only three counties that opposed a convention now voted for ratification. The size of the vote was almost equal the 192,554 cast in the Kolb-Oates election of 1894, but was considerably less than the 242,483 votes cast in the peak year election of 1892 (Kolb-Jones). The majority for the constitution was 26,879. Thirty-four counties gave majorities for the constitution, thirty-two (including the area from which Houston was created in 1903) voted against. Twelve Black Belt counties (with a Negro population of more than two-thirds), which had on so many previous occasions rolled up heavy majorities for the Democratic party, voted 36,224 to 5,471 for the constitution.[71] According to the Mobile *Register* of November 13, 1901, these counties were late in reporting their vote. The vote in the other fifty-four counties of the state was 76,263 against to 72,389 for the constitution. The proportion of the vote for the constitution decreased roughly from county to county as the Negro proportion of population decreased. Seventeen counties, all but one of which was a Black Belt or bordering county and all but two of which voted for the constitution, each cast more votes than their total potential white voting population. In the three Black Belt counties of Dallas, Hale, and Wilcox, 17,983 votes were cast (17,475 for the constitution to 508 against) or 12,360 more than the total white male voting population of 5,623.[72] The majority given the constitution in these three counties represents considerably more than half the total majority in the whole state. Ironically, the Negro was supposed to be the only group disfranchised by the constitution. In 1945, after a study of the election returns on the constitution, the Thirteenth Annual Alabama Policy Conference asked, "Was Alabama's Constitution of 1901 actually adopted?" "Is it not possible that the majority votes were votes of Negroes who were to be deprived of their franchise by the very Constitution they were voting in? Or did they represent irregularity in voting? Or in counting?"[73]

---

[69] *Ibid.*, October 16, 20, 29, November 6, 7, 9, 10, 1901.

[70] *Alabama Official and Statistical Register* (1903), 141-142.

[71] These counties were Greene, Sumter, Hale, Marengo, Perry, Dallas, Wilcox, Lowndes, Montgomery, Macon, Bullock, and Russell.

[72] *Alabama Official and Statistical Register* (1903), 141-142; Bureau of the Census, *Twelfth Census of the United States: 1900* (Washington, 1902), I, 970. Figures show that in ten counties alone (Hale, Wilcox, Dallas, Greene, Sumter, Perry, Lowndes, Macon, Russell, and Chambers) 17,021 of the 26,879 total majority in the state were Negro votes, since these counties cast that many more votes for the constitution than their total potential white voting population.

Four Tennessee Valley counties voted for the constitution and five against it. Jefferson, Walker, and Chambers counties, where the new industrialism had taken hold, voted for the new constitution. Calhoun and Randolph, the home counties of John B. Knox and William A. Handley respectively, went for the constitution. But the "hill counties" of North Alabama, with few exceptions, voted against the new document. Voting in the Wiregrass country of southeast Alabama showed strong opposition to the constitution in that section. Wherever poor whites were numerous, whether in a precinct, county, or whole section of the state, strong opposition to the constitution is indicated by the returns. These same areas had been the stronghold of the Populist revolt.[74] They also opposed secession in 1861. Briefly, the proponents of the constitution centered in a belt across the south center of the state, with its opponents in northern and southeastern Alabama, a pattern of sectionalism which has been one of the most constant factors in the history of the state. The northern half of the state cast a majority of 7,400 against ratification and the southern half 34,300 for ratification.[75]

Charles M. Shelley and other opponents of the constitution charged that the constitution was "counted in" by the Negro vote of the Black Belt.[76] And contemporary accounts support them. The Mobile *Register,* February 15, 1903, in discussing the part played by the Black Belt and the railroads in making the constitution declared: "The roads through their representatives and spokesmen in Alabama, rallied solidly for a call for the constitutional convention. They did the same thing for ratification. Against their opposition the Black Belt would have been powerless to count in either the call or the constitution." Although one cannot prove that the large Negro vote in the black counties in favor of the constitution was fictitious, a study of the election returns, contemporary sources, and Black Belt voting practices has convinced the author that is some counties almost every eligible Negro was "voted" although thousands never appeared at the polls. In other cases the Negro appeared at the polls and either voluntarily or involuntarily voted away an interest so fundamental to him as the franchise. Figures prove that the constitution was adopted by the majorities of the black counties, whether the vote was fictitious or real.

---

[73] *Report of the Thirteen Annual Policy Conference on Democracy and the Constitution, Alabama Policy Bulletin No. 14* (Montgomery, 1945), 6-7. Hereinafter cited as *Alabama Policy Bulletin No. 14.* The Conference was composed of legislators, teachers, and other citizens interested in problems of government.

[74] For a study showing the correlation between the vote on the constitution and the vote for Kolb in 1892, see V. O. Key, *Southern Politics in the State and Nation,* 545. Key takes the ten highest counties for the constitution (all but two with a Negro population of more than 75 per cent) and the ten lowest counties (all white counties) and shows that on the whole the latter were overwhelmingly for Kolb in 1892 while the former gave him scant support.

[75] Mobile *Register,* November 22, 1901.

[76] *Ibid.,* November 14, 19, 1901; Birmingham *Age-Herald,* November 14, 15, 1901; "Alabama's New Constitution," *Outlook,* LXIX (November 23, 1901), 75.

It is also true that in some parts of the state where a strong tradition of "voting" the Negro did not exist, the Negro voted against the constitution. In Mobile County, with a Negro newspaper, a large part of the Negro vote went against the constitution.[77] The county showed a majority of five against. In Lee County, where the Negro held the balance of power between two white factions, the bulk of the Negro vote was cast against the constitution.[78] The county went against the constitution by a vote of 2,371 to 1,174. In the Black Belt county of Lowndes and the neighboring county of Autauga (both of which went against the constitution) the light negative vote indicates that the local Democratic organization made little effort to "vote" the Negro and that some Negroes voted their real interest. The former county was the home of ex-Congressman Willis Brewer, influential opponent of the constitution. A few days before the election, the Montgomery *Advertiser* reported the county in the doubtful column.[79] Moreover, the vote in Lowndes and Autauga is explainable in part at least by the fact that some Black Belt leaders preferred to continue to "vote" the Negro under the old constitution rather than risk loss of representation and power under the new.

Most of the Negroes were disfranchised under the Constitution of 1901. In 1900, there were 79,311 Negro voters on registration rolls in fourteen Black Belt counties,[80] whereas only 1,081 Negroes registered in these counties during the first year of the new constitution.[81] In Dallas and Lowndes, where the Negro exceeded 75 per cent of the population, 59 and 44 Negroes registered respectively during the first registration. Although in 1900 there were approximately 181,315 eligible Negro voters under the old constitution,[82] only 2,980 registered in the whole state during the first registration which ended January 1, 1903. In 1908 there were 3,742 registered Negroes in Alabama.[83]

---

[77] Mobile *Register,* November 12, 13, 1901.

[78] Montgomery *Advertiser,* November 11, 1901.

[79] *Ibid.,* November 8, 1901. Autauga voted for the convention (512 to 63), against the constitution (920 to 905) ; Lowndes voted for the convention (3,226 to 338), against the constitution (1,642 to 1,390). The census of 1900 listed 1,524 white and 2,311 potential Negro voters in the former and 1,121 white and 6,455 potential Negro voters in the latter. *Alabama Official and Statistical Register,* (1903), 142.

[80] Montgomery *Advertiser,* October 11, 1901.

[81] *Alabama Official and Statistical Register* (1907), 230-231. The counties were Autauga, Barbour, Bullock, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Perry, Russell, Sumter, Wilcox, and Montgomery.

[82] Bureau of the Census, *Twelfth Census of the United States,* I, 970; *Appleton's Annual Cyclopaedia,* VI, 3rd series (1901), 665; John Hope Franklin, *From Slavery to Freedom,* 337-338.

[83] *Alabama Official and Statistical Register* (1911), 262-263.

A study of statistical material and contemporary sources also shows that large numbers of whites were disfranchised by the Constitution of 1901. The fourteen Black Belt counties had 26,680 registered whites in 1900.[84] Only 23,330 whites registered under the new constitution before January 1, 1903, a reduction of 3,350 white voters in an area which contained very few poor whites. In 1900 there were approximately 232,821 eligible white voters under the Constitution of 1875 in Alabama.[85] Three years later there were only 191,492 registered white voters,[86] a reduction of 41,329 eligible white voters despite the increasing population and the fact that this was the period during which the poor whites made every effort to register permanently lest they be forever disfranchised under the property, educational, and other tests of the Constitution. During this period, presumably, a larger percentage also paid their poll tax than in later years.[87] Yet, some 25,000 to 50,000, many of whom had registered for life under the temporary plan, did not pay their poll tax during the first year and were hence ineligible to vote.[88] Since the tax was accumulative from 21 to 45 years of age (true elsewhere only in Georgia, 1908-1945), as time passed it became much more of a deterrent to voting in Alabama than in any other state excep Georgia.[89] After the institution of the permanent plan in January 1903, many illiterate whites were disfranchised on reaching 21 years, because, although Alabama leaders linked the suffrage provisions with increased education, time as well as a good school system was necessary in order to reduce Alabama's high illiteracy rate.[90] The vagrancy clause was use to disfranchise whites as well as Negroes.[91] As Americans became more mobile, increasing numbers of voters were disfranchised by the severe residence requirement of two years in the state, six months in the country and three months in the precinct. No previous constitution had required more than one year in the state, three months in the county and one month in the precinct.

---

[84] Montgomery *Advertiser,* October 11, 1901.

[85] *Appleton's Annual Cyclopaedia,* VIII, 3rd Series (1903), 688.

[86] *Alabama Official and Statistical Register* (1907), 230-231.

[87] Fear of disfranchisement was at a high pitch at this time and only with the passage of time would the accumulative feature of the poll tax become effective.

[88] *Appleton's Annual Cyclopaedia,* VIII, 3rd Series (1903), 688; Moore, *History of Alabama and Her People,* I, 914. Caffey, *Suffrage Limitations at the South,* 3. Thomas Nelson Page wrote in 1904: "We are informed by a Southern correspondent, whose means of acquaintance justify our placing some confidence in his statement, that in Alabama fully fifty thousand white men, under the practical operation of the Constitution, by non-payment of poll taxes or other clauses have been disfranchised." Thomas Nelson Page, *The Negro: The Southerner's Problem,* 149. The fact that less than half of the 191,492 registered voters voted either in the first Alabama state wide primary or the regular election of 1902 would indicate that perhaps more than fifty thousand failed to pay their poll tax. In 1909, Murphy wrote that "many white men have been excluded" from the franchise. Edgar Gardner Murphy, *The Basis of Ascendancy,* 4. In that same year, ex-Populist Joseph C. Manning spoke before a Negro conference in New York, "asserting that the enslavement and disfranchisement of the white workingman was already following the oppression of the black" under the Alabama constitution. Herbert Aptheker (ed.), *A Documentary History of the Negro People in the United States,* 926.

[89] Key, *op. cit.,* 581-582, 617.

[90] Alabama's illiteracy rate of 14.8 of the native white population ten years of age and over was exceeded only by Louisiana, North Carolina, and New Mexico. Page, *op. cit.,* 313.

The disfranchisement of the whites under the Constitution of 1901 increased with the passage of time. A study made by the Alabama Policy Conference, based on the census of 1940 and registration and poll tax statistics from the offices of secretary of state and state comptroller, showed that in 1941-1942, some 600,000 whites and 520,000 Negroes were disfranchised, whether voluntarily or involuntarily.[92] Supposedly designed to disfranchise the Negro, the poll tax and other deterrents had disfranchised more whites than Negroes.[93] By contrast, there were only 440,291 registered voters in the state. In most counties more whites were disfranchised than were registered. In Jefferson County only 65,000 of a potential white voting population of 175,584 were registered. Some 110,584 whites and 108,775 Negroes were disfranchised. In the North Alabama white county of Winston, 3,600 were registered; 5,378 whites and 75 Negroes were disfranchised. In the adjoining county of Cullman 9,000 were registered; 14,899 whites and 335 Negroes were disfranchised. In the Black Belt County of Dallas 4,741 were registered; 4,589 whites and 20,863 Negroes were disfranchised. By far the most important constitutional deterrent in the case of the whites was the poll tax. In the case of the Negro so many constitutional requirements and even extralegal restraints were involved as to lessen the importance of the poll tax. These figures indicate that the Constitution of 1901 restricted the voting franchise to a select white minority and eliminated the Negro voter.

The immediate reduction of votes cast in the first election after the adoption of the new constitution amounted to 40 per cent. In 1900 153,302 voters cast their ballots in the gubernatorial election, only 91,861 after the adoption of the constitution in the election for governor in 1902.[94] Less than half of the registered voters participated in the election, many because of failure to pay their poll tax, others because of apathy. Despite the increasing population of the state, only 94,661 ballots were cast in the hotly contested gubernatorial primary of 1906 and 71,616 in the regular election which followed.[95] After the adoption of the constitution the vote on all officials declined rapidly. Whereas the average vote for each congressman in Alabama was 16,760 in 1900, it was 10,242 in 1902, 12,093 in 1904, and only 11,849 in the congressional primary election of 1910 despite a greatly increased population.[96] In the presidential election, which was not effected by the introduction of the primary, 33.9 per cent of the potential voting population cast ballots in the election of 1900. This percentage declined to 21.2 in 1904, 19.4 in 1908, and 13.7 in 1924.[97] The number of voters (154,764 in 1900) was not equalled again until the enfranchisement of women. In 1920, 241,080 voters participated in the presidential election, but this number declined to 166,593 in 1924.[98]

---

[91] Caffey, *op. cit.,* 3-6.

[92] These figures were derived by subtracting the registered voters from the potential white and Negro voters as shown by the census of 1940. *Alabama Policy Bulletin No. 14,* 7-8. In 1942, the National Committee to Abolish the Poll Tax placed the number of whites disfranchised at 815,000 and Negroes at 685,000, which seems excessive. *National Committee to Abolish the Poll Tax Bulletin* (Washington, 1943), 4. See also William M. Brewer, "The Poll Tax and the Poll Taxers," *Journal of Negro History,* XXIX (July, 1944), 265.

[93] In the eight poll tax states in the 1944 presidential election the percentage of potential voters who cast their ballots averaged 19 per cent (15.1 per cent in Alabama) as contrasted with 61.9 per cent for the non-poll tax states. However, in Florida, Louisiana, and North Carolina, three Southern states which had repealed the poll tax, the percentage of potential voters voting was 32.6 per cent, which shows the poll tax to be by no means the only deterrent to voting in Alabama and the South. *Alabama Policy Bulletin No. 14,* 46-47.

However, as V. O. Key and other students of Southern history have pointed out, a decline in the peak electorate of the Populist period had taken place before the adoption of many of the disfranchising constitutions.[99] A comparison of the figures given in the above paragraph with the following shows that to be true in Alabama. In the Kolb-Jones election of 1892, 242,483 votes were cast;[100] 232,516 voted in the presidential election of 1892;[101] and the average vote for congressmen in Alabama in the same year was 25,846.[102] As early as 1905, Francis G. Caffey, a Montgomery lawyer, attributed the decline in the Alabama electorate to "other contemporaneously operating causes"[103] as well as to Alabama's disfranchising constitution—the most notable of which was a return to the one party system after the brief reappearance of two strong parties in the Populist period. While this school of thought would attribute the decline of the electorate in part to Alabama's disfranchising constitution, they believe that the passing of the Populist revolt, adoption by the Democrats of some of the Populist program, antagonism aroused by Negro voting during the agrarian revolt, and consolidation of the one party system had already loosed processes that would have continued to reduce the electorate.[104] However, if Alabama's disfranchising constitution did in part record an accomplished fact, it made the disfranchisement of thousands of whites and blacks not only involuntary, but legal and much more permanent.

---

[94] *Alabama Official and Statistical Register* (1903), 204-205, 218-219. The first state wide primary was held in 1902, but only 89,236 voters participated, which was less than the 91,861 ballots cast in the regular election. Minutes of the Democratic State Executive Committee, September 3, 1902.

[95] Minutes of the Democratic State Executive Committee, September 7, 1906; *Alabama Official and Statistical Register* (1907), 246-247, 271-272.

[96] *House of Representatives Report,* No. 2130, 56 Cong., 2 Sess., 127; *Congressional Record,* XL, 59 Cong., 1 Sess., 3886-3887. The Crumpacker bill, pending before Congress from 1902-1908, was an attempt to reduce the representation in the House of Representatives of Alabama and other disfranchising states under the Fourteenth Amendment. According to the *Congressional Record* the average vote for each congressman for the whole nation was 35,025 in 1904. *Ibid.,* 3885.

[97] The following is the percentage of participation of potential voters in presidential elections in Alabama from 1872 to 1944, with adjustments on the basis of the census in non-census years. In 1872, 64.7 of the potential voting population cast their ballots, 59.1 in 1876, 48.2 in 1880, 45.5 in 1884, 47.6 in 1888, 59.0 in 1892, 45.7 in 1896, 33.9 in 1900, 21.2 in 1904, 19.4 in 1908, 21.6 in 1912, 22.9 in 1916, 21.4 in 1920, 13.7 in 1924, 19.1 in 1928, 17.7 in 1932, 18.7 in 1936, 18.9 in 1940, anl 15.1 in 1944. *Alabama Policy Bulletin No. 14,* 47. These figures indicate that the Republican party before the Populist revolt furnished a much more live opposition to Democracy and hence brought out a larger vote than it was able to do after the Negro was disfranchised in 1901. The vote for the Republican party in the state declined from 55,634 for McKinley in 1900 to 22,472 for Roosevelt in 1904, to 9,732 for Hughes in 1916.

[98] *Ibid.;* Monroe N. Work (ed.), *Negro Year Book, An Annual Encyclopedia of the Negro, 1931-1932,* 115-117.

[99] Key, *op. cit.,* 532-535.

[100] Clark, *Populism in Alabama,* 136.

True to promise, Alabama Negroes carried their disfranchisement into federal court. J. W. Giles, a Montgomery Negro, brought action against the Montgomery board of registrars which had denied him registration, charging that "the provisions of the amended constitution of Alabama were repugnant to the Constitution of the United States in their intent and purpose, and in their language and meaning, as well as in their operation and administration."[105] The plaintiff's counsel declared that Negro majorities in more than twenty Alabama counties "had been overcome by fraud and intimidation for twenty years, and the provisions of the new constitution were to take the place of fraudulent methods and intimidation in the government of the commonwealth." The decision of the United States Supreme Court, written by Mr. Justice Oliver Wendell Holmes, denied the relief asked. If the suffrage article of the Alabama constitution had been written with fraudulent intent, as the plaintiff claimed, the Court would become a party to the fraud by ordering Giles' name placed on the registration rolls, declared the Court.[106] Furthermore, the Court found that "relief from a great political wrong, if done, as alleged, by the people of the state and the state itself, must be given by them or by the legislative and political department of the government of the United States," rather than by the Court, since the task was beyond the powers of the Court to perform.[107] The Negro had no other recourse. In the words of one Negro leader, "These disfranchisement measures, harsh and severe as they are in many features, meet with little or no opposition from the nation at large. Although the clear and unmistakable intent of the Federal Constitution is set at naught, yet the nation suffereth it to be so. There is no moral force in the nation at present that will lead to their undoing, and no political exigency seems to demand it."[108]

---

[101] *World Almanac and Encyclopaedia* (1911), 654.

[102] Caffey, *op. cit.*, 7.

[103] *Ibid.*, 13.

[104] Key, *op. cit.*, 531-535.

[105] *Giles* v. *Harris*, 189 U. S. 475 (1903). The Supreme Court of Alabama upheld the right of a Limestone County Negro, who had served in the Union army, to register under the soldiers clause of the constitution. John B. Knox, "The Reduction of Representation in the South," *Outlook*, LXXIX (January, 1905), 171.

[106] Three justices dissented in whole or in part from the decision.

The promise of the conservatives that the disfranchisement of the Negro would bring a return of the two party system and allow white men to divide freely on fundamental issues did not materialize.[109] In 1902, the first state wide primary, well on its way for some years, followed hard on the heels of Alabama's disfranchising constitution.[110] Alabama leaders connected it with the constitution and declared that whites might now divide in the primary because the Negro was disfranchised.[111] But, under the decisions of the United States Supreme Court, the constitution was unnecessary for that purpose, as the Court allowed the party itself (but not the state) to exclude the Negro from the primary until 1941.[112] However, the creation of a more select electorate made it somewhat easier for the conservatives to acquiesce in the popu-

[107] "The Alabama Case," *Outlook,* LXXIV (May, 1903), 95; "The Alabama Decision," *Nation,* LXXVI (April, 1903), 346; Roy W. Smith, "Negro Suffrage in the South," *Studies in Southern History and Politics,* 250-251. The grandfather clause was not declared unconstitutional until the Guinn Case (1915), which was a case from Oklahoma where the grandfather clause had been made permanent. At the time it was declared unconstitutional, it had long since served its purpose in most Southern states. Charles S. Mangum, *The Legal Status of the Negro,* 397-398. For a discussion of disfranchisement and the courts, see William Alexander Mabry, The Disfranchisement of the Negro in the South, 471-499 (unpublished Doctoral thesis, Duke University, 1933).

[108] Kelley Miller, *Out of the House of Bondage,* 130.

[109] It is true that some reforms followed the adoption of the new constitution and have been assigned by some historians to the introduction of the primary and the freedom of division allowed the white man with the elimination of the Negro. However, the advances made in railroad control and improvements in the public school system which were made under Braxton Bragg Comer (1906-1910) were long overdue. They were demanded by the middle class as well as the poor whites and came despite the elimination of many of the latter from the electorate.

[110] Allen Woodrow Jones, "A History of the Development of the Direct Primary in Alabama," 138 (unpublished Master's thesis, Alabama Polytechnic Institute, 1953).

[111] The Mobile *Register,* March 23, 1902, printed letters of George P. Harrison and others advocating the white primary under the heading, "The logical sequence of the suffrage clause the white primary." Many of the newspapers declared the white primary a logical outgrowth of the disfranchisement of the Negro. Some are quoted in Jones, *op. cit.,* 151-158. Even the conservative Black Belt Montgomery *Advertiser,* somewhat reluctantly admitted: "It is now a fair and square contest between white voters and the *Advertiser* would not be unwilling to have a decision made in a general primary." Mobile *Register,* March 25, 1902, quoting the *Advertiser.*

[112] *United States* v. *Classic,* 313 U. S. 299 (1941).

lar demand for the substitution of the primary for the nominating conventions which they controlled. Alabama disfranchisers could claim with some truth a lessening of fraud, bribery, intimidation and ballot box stuffing in the years following 1901. One way to prevent bribery and the theft of ballots, of course, is to prevent people from casting them.

In conclusion, conservative forces which had secured the call for the convention and had written the constitution showed the same mastery of politics in the ratification fight. Opposed by the Republicans, the last remanents of the Populists, and Democrats who spoke for the "common man," they skillfully used every power at their command to adopt a constitution which would prevent a resurgence of Populism or the birth of another such movement. They utilized the cry of "white supremacy," placed emphasis on Negro disfranchisement, and gave assurance that "no white man would be disfranchised." As a result, many whites of the hills, the wiregrass, and pine barrens voted for the new constitution in order to remove the Negro from politics and at the same time prepared the way for their own disfranchisement. The poll tax became a much more important white than Negro disfranchiser. However, the bulk of the ratification vote came from the fertile agricultural area of South-Central Alabama, where the Black Belt Bourbons were able to control the large Negro vote as they had done on so many previous occasions. Three Black Belt counties (Dallas, Hale, and Wilcox) furnished considerably more than half of the total majority for the constitution. The new constitution was also supported by the railroads and North Alabama industrialist, whose interests coincided with that of the Black Belt. Oscar W. Underwood, leading spokesman for Alabama's new industry, skillfully directed the campaign for ratification. Although the Black Belt lost some voting power in the election of governor and other state wide officials by the disfranchisement of the Negro, it maintained its hold on the legislative branch of the government. Moreover, the creation of a more select upper class electorate throughout the state was ample compensation for the loss of the Negro vote, the control of which was a fraudulent and hazardous process at best. Furthermore, the alliance based on a community of interest between the Black Belt and the industrialists had been welded together. It has continued to be one of the most constant factors in the state's politics.

In operation, the suffrage provisions of the Alabama constitution of 1901 proved undemocratic and even reactionary. Although practically all Negroes were disfranchised, the passage of time brought the disfranchisement of more whites than Negroes. Although other Southern states were setting up barriers to free registration and suffrage at the end of the last century, those enacted by the 1901 convention in Alabama represented the most drastic break with the past. Unlike the constitutions of some Southern states, those of Alabama from 1819 had never contained property, educational, tax paying, militia, or other such qualifications for voting. Universal white manhood suffrage had existed since 1819; universal manhood suffrage since 1868. With the exception of a religious qualification, the Alabama Constitution of 1901 contained almost every qualification for voting ever devised by the mind of man. Constitutional requirements, which supposedly discriminated against "Negro characteristics" rather than the Negro race, proved to be a web in which more whites than Negroes were caught.

CHAPTER XXI

CONSTITUTIONAL TRENDS IN ALABAMA IN THE NINETEENTH CENTURY: A SUMMARY

Constitution making in Alabama during the period from 1819 to 1901 was a never ending process. A progressive democracy needs a changing constitution, and no state constitutional convention has ever shown the genius for writing a constitution as adequate for changing needs as the national convention in Philadelphia in 1787. Alabama moved from a rural frontier of about a hundred thousand people in 1819 to a semi-industrial state with thriving cities and almost two million people in 1901. In these eighty-two years the state held six conventions, or an average of one every fourteen years. The Civil War and its aftermath precipitated a series of crises which brought four conventions in fifteen years. As one reads the changing Alabama constitution and compares it with those of other states, it becomes apparent that constitutional development had become an evolutionary process, each state borrowing, adding to, and building on what others had done. Since Alabama's constitutional needs and problems were common to the South, the state made contributions to Southern constitutional development in particular and borrowed from other Southern states. However, other sections played their part in this process, the constitutions of the Mid-West making a lasting imprint during the Reconstruction period. The Alabama constitution was never made entirely new at any time; it always embodied the result of past history, experience, and practice in government. Alabama's first Constitution, for example, was the product of constitution making in older states, frontier influences, and the state's territorial history.

Alabama, coming into the Union in 1819, missed the first period of constitution making in America. The early constitutions, usually framed by the legislature, gave expression to the impressions of the Revolutionary era. They manifested a dread of executive and military power (stemming from experiences with England and the royal governors), and showed a disposition to deliver the government into the hands of the legislative authority, which more directly represented the people. Most of the early constitutions contained little but an elaborate bill of rights, a rather crudely drawn outline of a frame of government with provision for few executive or judicial officers.

The second period of constitution making began in the early part of the nineteenth century. Alabama entered the Union in this period, when the writing of a constitution had become a process for a constituent assembly alone and when constitutions were being submitted to the people for ratification. The powers of the legislative branch began to be questioned, checks and balances of power among the three departments further developed, and the governor became a popularly elected official with veto powers. An increasing demand for popular election of all executive and judicial officials and the extension of the suffrage by the elimination of property and educational qualifications were both notable trends of the period. Property and religious requirements for officeholding in the older states were abolished. A growing distrust of the legislative branch continued to develop as the century advanced. The Alabama Constitution of 1819 reflected most of these trends. Made in the early part of the period, however, it still favored the legislative branch with large appointive powers and contrary to the trend was not submitted for ratification.

The third period began about the time of the Civil War and was made noticeable by a tendency to further strengthen the judicial and especially the executive department in the crisis of the war period. As governmental problems increased because of industrialization and urbanization, the governor's powers were further increased. The most marked change during this period, however, was a further narrowing of the power and competency of the legislature, and the fettering of its action in some fields by absolute prohibition. The trend was accentuated in Alabama and other Southern states where the legislative branch was more discredited than elsewhere as a result of the public's belief that it was incompetent and of general low caliber during the Reconstruction period. Added distrust of the electorate after the enfranchisement of the Negro also had its effect. Severe restrictions on taxation, state aid to internal improvements, local legislation and other like limitations were the result. The denial of these powers to the legislature in Alabama and other states was not a step toward democracy. The withdrawal of power from the legislature gave it back to the people, but as the people could only act in direct legislation after long delay and by complicated methods, such provisions limiting the competency of the legislature were really conservative in their tendency, and in reality were a check imposed by the people on themselves because experience had led them to distrust popular government.

The changing Alabama constitution is a barometer of the economic, social, and political history of the state during the nineteenth century. It reflects the frontier democracy of 1819, the expansion of democracy during the Jacksonian period, the effort of the state to defend itself in 1861, economic and political frustration as a result of defeat in 1865, the effort of the Radicals to create a new political, economic, and social order in 1868, reaction under Bourbon leadership in 1875, the Populist revolt against this leadership in the 1890's, and finally the great victory of the conservatives in 1901.

The presence of the Negro in large numbers has been the most important factor in the constitutional history of the state. No major constitutional issue has faced the state since 1819 that has not been decided largely in the light of the presence of the Negro. Scarcely less important has been the concentration of this Negro population in the rich agricultural area of South-Central Alabama, with very few Negroes in the hills of North Alabama. This fact, based on geography, has resulted in an intense sectionalism, reflected in every constitutional convention in the state's history. The controversy in the convention of 1819 over whether to adopt the "white basis" or the "federal ratio" for apportionment in the state legislature began a sectional struggle between North and South Alabama which has lasted to this day. The much larger sectional struggle between the North and the South over slavery brought the convention of 1861 and the resulting Civil War which followed.

More than 437,000 Alabama slaves became freedmen in 1865 with a resulting jolt to the whole economic, political, and social order. In that year Alabamians accepted the decision of the war, writing a constitution which recognized the new status of the Negro. However, the people of the state did not believe that the loss of the war meant accepting a political and social in addition to an economic revolution in regard to the Negro. None of the delegates in the convention of 1865 foresaw the full import of the new order which was taking shape in the minds of the Northern extremists. The Radicals attempted to write their conception of the new order into the Constitution of 1868. The Negro was enfranchised; former Confederate supporters were disfranchised. Great emphasis was placed on education of the Negro as well as the illiterate white. Scalawags in the convention pressed for constitutional prohibitions against intermarriage of the races, mixed schools, and common use by both races of public carriers and public places, but the convention refused to make such provisions. A new emphasis was placed on industrialization with the creation of the commissioner of industrial resources.

In 1874, in a "white supremacy" campaign in which South Alabama whites skillfully won the support of North Alabama, the Radical regime was overthrown. The Bourbon constitutional convention which followed abandoned many of the objectives of the Radical period and launched a policy of retrenchment and economy in an effort to extricate the state from a $29,000,000 debt amassed since 1867. However, the Carpetbaggers left a lasting imprint on the Alabama constitution. The clock could not be turned back on popular election of all judicial and executive officials, guarantees of homestead exemptions and women's rights. The article on education in the Constitution of 1875 was more like that of 1868 than any previous article, and the convention of 1875 dared not take action against Negro suffrage for fear of federal intervention. In fact, the bill of rights of the Constitution of 1875 forbade any educational or property qualifications for voting or the denial of the right to vote to anyone because of race, color, or previous condition of servitude. Moreover, no factor influenced the Bourbon convention more than unfaded memories of the Carpetbag-Negro regime. To guard against every possible evil of that regime and many purely imaginary ones, restrictions were written into the Constitution of 1875 until it became an "instrument of prohibition."

Force, intimidation, and fraud, as well as legal expedients were used to control the Negro vote from 1875 to 1901. The divided white electorate of the Populist period placed a premium on the Negro vote and gave the Negro the balance of power, thus setting the stage for his disfranchisement. As Populism subsided and the national government completely abandoned its policy of Negro portection because of its venture in imperialism, the conservatives of Alabama moved fast in order to create a select electorate by the disfranchisement of the Negro and lower class whites. With a campaign cry of "white supremacy" patterned on that of 1874, the support of the railroads and North Alabama industrialists, and control of the "Negro vote" of the Black Belt, they created a greatly reduced electorate with more conservative tendencies than the old. The popular vote on adoption of the Constitution of 1901 shows a sectional alignment of long standing in Alabama. Opposed by the North Alabama hill country and the Wiregrass which feared disfranchisement of their poor whites, the constitution secured the overwhelming support of South-Central Alabama. Those areas that opposed secession and embraced Populism, opposed the Constitution of 1901. Those areas that gave secession their ardent support and fought Populism with vehemence, enthusiastically supported the new document.

The Constitution of 1819 contained no property, educational, militia, taxpaying, or similar qualifications for voting and provided for universal white manhood suffrage. In its suffrage and other general divisions it was noted along with the constitution of Kentucky for its democracy. The Constitution of 1901 contained property, literacy, good character, understanding, vagrancy, petty crimes, and poll tax clauses, which limited the suffrage and made it the most complicated suffrage article in any of the state constitutions. It represented a drastic break with the past as no previous constitution of Alabama had contained any of these provisions. Universal white manhood suffrage had existed since 1819 and universal manhood suffrage since 1868. The Constitution of 1901 effected a revolution in state politics even as the Constitution of 1868. The latter enlarged the electorate by more than forty per cent by enfranchising the Negro. The former reduced the electorate by an even greater percentage by disfranchising the Negro and many whites as well. In order to secure the disfranchising convention, the conservatives found it necessary to make a "no white man disfranchised pledge" for the benefit of the lower class whites. Consequently, the soldiers, grandfather, and understanding clauses were incorporated in the temporary part of the suffrage article because they were necessary to secure enough white votes for ratification. Although a broader program of education was instituted to reduce illiteracy, many whites coming of age after 1902 were disfranchised by the literacy test. Others were disfranchised by the property and vagrancy clauses.

The first constitutional provision for a poll tax was written into the Constitution of 1868, when the Radicals provided for a compulsory poll tax of $1.50 to be used for educational purposes. Prior to that time a poll tax had been levied by statuatory enactment and had been used in various ways. The Constitution of 1875 contained the same poll tax provisions as that of 1868. The convention of 1901 continued the poll tax for schools, but also made it non-compulsory as a tax and a prerequisite for voting. It was to be paid nine months before the regular election in November and was accumulative from year to year. The poll tax proved by far the most important white disfranchiser.

Residence requirements for voting were lengthened at the end of the century. All constitutions prior to 1868 required one year in the state and three months in the county or district. The Carpetbaggers provided for six months in the state and three months in the county or district in order not to disqualify themselves. The Constitution of 1875 restored the residence provisions existing prior to 1868. But the convention of 1901 lengthened residence requirements for voting to two years in the state, one year in the county and three months in the ward or precinct. Supposedly directed at migratory Negroes, these severe residence qualifications also disfranchised some whites from the beginning. Moreover, as Americans have become more mobile, they have taken an increasing toll of both whites and Negroes in all economic groups.

No religious, property, educational, or tax paying requirements for office holding have ever been written into any of Alabama's constitutions. The bill of rights of every Alabama constitution has forbidden any religious qualification. An attempt in the convention of 1901 to exclude the Negro from office holding on the basis of race was defeated because it was unnecessary. The Negro rarely held office in Alabama after 1880.

Unlike the constitutions of most of the older Southern states, the Alabama Constitution of 1819 provided for the election of the governor and sheriffs by the people. The election of other executive officials was entrusted to the legislature. The legislature elected the secretary of state, the state treasury, and the comptroller of public accounts until 1868, when the Radicals provided for their election by the people. The election of all judicial officials, except the justices of the peace whom the people elected, was granted the legislature by the Constitution of 1819. In 1850, the election of circuit and county judges was given to the people, but chancellors and judges of the Supreme Court were still elected by the legislature. There was much agitation in the eighteen-fifties for the election of all executive and judicial officials by the people. Before this change could be accomplished, however, the Civil War checked constitutional reform. The Constitution of 1868 made all executive and judicial officials elective by the people. The Negroes, Carpetbaggers, and most of the Scalawags demanded this privilege in the name of democracy, although the old electorate had not enjoyed it. The convention of 1875 left the election of these officials, with minor exceptions, to the people. They did this despite the fact that they believed the large Negro vote was a menace to democracy. To provide otherwise, they feared, would defeat the constitution at the polls. In 1875, the election of solicitors was returned to the legislature, and a notary public with justice of the peace powers was to be appointed in every election precinct by the governor. With these exceptions, the principle of the election of all judicial and executive officials by the people was violated during the last quarter of the nineteenth century only in cases of non-constitutional officials. For instance, in order to dispense with Negro and Republican officeholders, the legislature took from the people the election of the court of county commissioners in some Black Belt counties and provided for their appointment by the governor. Having disfranchised the Negro and many whites, the convention of 1901 returned the election of solicitors to the people. The twentieth century opened with the election of all executive and judicial officials in the hands of a reduced electorate.

The Constitution of 1819 provided for annual elections; the Constitution of 1901 for quadrennial elections, which is in itself a commentary on a growing distrust of popular government. Alabama had annual elections to 1846 and biennial elections from 1846 to 1901. Quadrennial elections cannot be explained in terms of the difficulty of controlling the Negro vote, since that vote was being eliminated. Arguments of economy and "stability in government" were made in favor of quadrennial elections, but it was a conservative move, a reaction to the popular revolt against the Bourbons of the late nineteenth century. The "stability in government" which the conservatives wanted was their continued control of that government. Because a legislature meeting quadrennially could be more easily controlled, they likewise provided for that innovation in government.

As already indicated, a growing distrust of the legislature was one of the most apparent constitutional trends in Alabama in the nineteenth century. After 1819, not a single convention met without placing additional limitations on the legislature. And as these restrictions were placed in the constitution, the legislative article adopted by each successive convention became longer than the previous one. The article on the legislative department in the Constitution of 1819 is four pages in length. The same article in the Constitution of 1901 fills ten pages. The people limited the legislature by the adoption of two amendments before the Civil War. In 1846, biennial instead of annual sessions of the legislature were instituted. In 1850, the amendment which took the election of district and county judges from the legislature and gave it to the people further restricted that body. The convention of 1861 restored annual sessions of the legislature but limited each session to thirty days. For the first time restrictions were placed on local legislation and on the power of the legislature to create debt; also the legislature was forbidden to grant divorces. The convention of 1865 forbade the legislature, which had a large share of the appointive power until 1868, to appoint a legislator to any state civil office of profit. The convention of 1867 provided that state aid to corporations could be given only with a two-thirds vote of the legislature (a check which proved insufficient) and forbade the legislature to grant any municipality the right to levy a greater tax than two percentum of the assessed evaluation of property. Strangely enough, the Radicals were the first to place a restriction on state aid to corporations and a tax limit in the constitution of Alabama. However, by granting to the people the power to elect many executive and judicial officials formerly elected by the legislature, the Radical convention made the greatest reduction in the power of the legislature. By creating a rival legislative body, the Board of Education, which had power to make all laws on the subject of education, the convention of 1867 further reduced the power of the legislature.

In 1875, with the Reconstruction period in mind, the Bourbon convention restricted the legislature by placing an absolute prohibition against state aid to corporations and a limitation of three-fourths of one per centum on state taxation. It provided for biennial sessions of the legislature limited to fifty days and because of frequent special sessions in the Radical period, special sessions were now limited (except by a two-thirds vote of the legislature) to a consideration of only those subjects listed in the governor's call. Additional sections were written into the constitution seeking to limit the legislature's power to pass local and special legislation. Moreover, numerous sections protecting the people from corrupt legislatures were incorporated into the organic law. Most of these concerned matters of legislative procedure or sought to regulate the legislature in making contracts. Memories of evil Carpetbag legislatures, whether imagined or real, were responsible for many restrictions. A proviso that the governor might veto items in an appropriation bill substantially reduced the legislature's power in financial matters. The convention of 1875, with Civil War and Reconstruction history in mind, forbade the legislature or the governor to suspend the writ of *habeas corpus* under any circumstances. The convention of 1901 provided for quadrennial sessions of the legislature, limited to fifty days. This proviso sought to reduce the time the legislature was in session by one-half, as biennial sessions under the Constitution of 1875 had also been limited to fifty days. Quadrennial sessions of the legislature were a new venture in state government, never previously tried in any other state. In 1901, thirty-one subjects on which there could be no local legislation were written into the constitution. The convention of 1901 further limited the legislature's power by providing that the governor might propose amendments to the legislature embodying his objections to a bill presented for his signature. The amendments must be accepted or rejected by the legislature without alteration. Moreover, the same convention further restricted the legislature's taxing power by limiting the legislature to a maximum tax of sixty-five-hundredths of one per centum instead of seventy-five-hundredths. Criticism of the legislature and prohibitions in the constitution against it had reached a new high by the end of the century. One delegate in the convention of 1901 seems to have expressed the feelings of many when he asked, "Is republican government a failure?" However, there was little agitation for control of the legislature by use of the initiative and referendum in Alabama. Conservatives feared direct appeals to the people more than they did the legislature.

The governor was given more power in 1819 than in most of the old states of the Union, despite the fact that popular resentment against several territorial governors had been great. He was made elective by the people rather than by the legislature; hence he was not dependent on the legislature as in many of the early state constitutions. Unlike most of the early state governors, the Alabama governor had the veto power. However, the governor in Alabama never secured the power to appoint major judicial and executive officials which governors enjoyed in some states. Beginning in 1819, the legislature elected the secretary of state, state treasurer, the comptroller of public accounts, and all judicial officials except the justices of the peace, who were elected by the people. When the election of some of them was denied the legislature by amendment in 1850 and the election of all of them by the Radical convention of 1867, they were all made elective by the people instead of appointive by the governor. And as new officials were created (state superintendent of education, commissioner of industrial resources, commissioner of agriculture and industry) they were also made elective by the people. As the century advanced the governor secured longer tenure and more participation in the making of legislation. He was elected biennially from 1819 to 1901 and quadrennially after 1901. However, the convention of 1901 provided that the governor could not succeed himself. In 1875, the governor was given much more participation in the making of financial legislation by the provision that he could veto part of an appropriation bill. In 1901, his legislative power was still further increased by the provision that the governor might propose amendments to the legislature embodying his objections to a bill presented for his signature.

Limitations were also placed on the governor. A board of pardons, created by the convention of 1901, limited his pardoning power. The Constitution of 1901 made the governor ineligible for election or appointment to the United States Senate during his term and for one year thereafter. Despite limitations, the governor gained power at the expense of the legislative branch of the government, which the people distrusted more than they did the executive. During Reconstruction, governors in Alabama were held in higher esteem than the legislatures; and, as the problems of government became greater, there was a tendency to give the governor more power and the legislature less. At the end of the century the governor was a much stronger official than at its beginning; he had four-year tenure and more legislative power.

Disagreement over apportionment in the legislature was an important reason for sectionalism in Alabama in the nineteenth century. In 1819 and thereafter, North Alabama wanted representation based on the white population; South Alabama, the federal ratio. Apportionment in the state legislature was based on the white population until 1868. All attempts of the "black" counties, beginning in the convention of 1819, to have the federal ratio adopted were defeated. Although the slaves had been freed, the convention of 1865, dominated by North Alabama because the outcome of the war had discredited South Alabama's leaders, retained white population as the basis for representation. If the Johnson government had survived, the apportionment in the legislature and the absence of Negro suffrage would have given the white counties control of Alabama politics. The Radical convention of 1867 not only enfranchised the Negro but provided that the whole population should be the basis of representation in the state legislature. The convention of 1875 retained that basis but violated the principle by apportioning representation for the next six years unfavorable to the Black Belt where the Radicals were still in control. Long before 1900, however, because of the rapid shift of population toward North Alabama and the dominant position of the Black Belt in the Democratic party during the Populist revolt, apportionment in the legislature and the Democratic State Convention favored the Black Belt and other South Alabama counties. Since apportionment in the constitutional convention of 1901 was based in large part on legislative apportionment, South Alabama controlled that body.

Leaders of that section proceeded to apportion representation in favor of South Alabama and provided in addition that the whole population as the basis of representation could not be changed by the amending process. The new constitution required the legislature to reapportion representation after each federal census; a provision which the legislature controlled by South Alabama has refused to honor since the federal census of 1910. Both white population and whole population as the basis of apportionment were violated throughout the nineteenth century by the fact that each county was given at least one representative regardless of population. And apportionment in the state Senate always had little semblance to population. The state census was used for apportionment until 1875 and after that the federal census.

The amending process in Alabama became easier during the century. The Constitution of 1819 provided for amendment by a two-thirds vote of the legislature, a majority vote of all the electors voting in a regular election, and a two-thirds majority vote of the following legislature. This process was followed until 1875, when the latter provision was stricken out. This requirement for amending the Alabama constitution, however, proved too difficult in the period from 1875 to 1901. The provision that an amendment secure a majority of those voting in a regular election was prohibitive since many electors voted for candidates but failed to mark the ballot on constitutional amendments. The one amendment adopted in the period was accomplished by a subterfuge. The convention of 1901 reduced the two-thirds provision to three-fifths; it also provided that an amendment might be submitted in a special or general election. In either case it was required to receive only a majority of those voting on the amendment.

The Constitution of 1868 was the first one submitted to a vote of the people in Alabama. Its submission was required by the Reconstruction Acts. Since that time all Alabama constitutions have been submitted rather than proclaimed. Popular fear of the powers of a convention became evident early in the century and increased as the century advanced. In 1861, popular indignation became intense in North Alabama when the secession convention carried Alabama out of the Union without a referendum vote, although North Alabama demanded one and there was great opposition to secession in that section. North Alabama was able to write a proviso into the Constitution of 1865 which declared that no convention should ever be called in Alabama without submitting the question to the people and securing a favorable vote. In order to secure the conventions of 1875 and 1901, the Democratic party found it necessary to pledge that the proposed conventions would not consider certain questions and would not change certain sections of the constitution; and the legislature wrote certain limitations on the proposed conventions in the enabling acts. Popular pressure forced both of these conventions to honor these limitations, nominally at least, even in the case of the "no white man disfranchised" pledge of 1901.

Each major revision of the constitution has lengthened the document. The Constitution of 1819 was a document of only eighteen pages, that of 1901 fifty-two pages. Many of the new sections were legislative rather than constitutional in nature. The Alabama constitution has become a code of laws as well as a constitution.

Legislative supremacy, evident in the Constitution of 1819, had been abolished by 1901. The executive had gained power at the expense of the legislature and the people at the expense of all three branches of the government. The judiciary, elected by the legislature for life dependant on good behavior in 1819, was made subject to the will of the people as the century advanced. Popular election of officials became an established principle in all three branches of the government. The amending process was made more pliable and the principle of submission of a new constitution to popular vote established. However, the march of democracy in Alabama was marred at the end of the century by the denial of the suffrage, its most essential feature, to the Negro and many whites. From the liberal suffrage article of 1819 Alabama moved by 1901 to the most complicated and undemocratic suffrage article in the United States.

BIBLIOGRAPHY

Bibliograpical Note

This study is based primarily on the journals and other printed records of Alabama's constitutional conventions, newspapers, state and federal documents, and contemporary speeches, articles, books, and pamphlets. Manuscript material has been used, but unfortunately the writer found few letters of the five hundred and ninety-nine delegates in Alabama's six constitutional conventions available. Manuscript minutes of some Democratic party meetings proved very valuable.

A. PRIMARY SOURCES

I. Manuscripts

John Campbell Papers, Duke University Library.

Clement C. Clay Papers, Duke University Library.

Thomas Goode Jones Papers, Alabama State Department of Archives and History.

Robert McKee Papers, Alabama State Department of Archives and History.

Edward A. O'Neal Papers, Southern Historical Collection, University of North Carolina.

J. W. A. Sanford Papers, Alabama State Department of Archives and History.

John W. Walker Papers, Alabama State Department of Archives and History.

Journal of the Convention of the People of Alabama begun in Montgomery, January 7, 1861, Alabama State Department of Archives and History.

Minutes of the Democratic State Executive Committee, April 3, September 3, 1901, Alabama State Department of Archives and History.

Minutes of the Democratic State Convention, March 29, 1899, Alabama State Department of Archives and History.

Minutes of the Democratic State Convention, March 19, September 3, 1901, September 7, 1906, May 16, 1910, Alabama State Department of Archives and History.

Mississippi Transcripts. Transcripts made by Dr. Thomas M. Owen from the Original Records of the Mississippi Territory. Mississippi Department of Archives and History.

Original Manuscript Returns on the Ratification of the Constitution of 1868. Alabama State Department of Archives and History.

Original Returns of the Vote on Amendments to the Constitution Submitted August, 1859. Alabama State Department of Archives and History.

II. Official Documents

1. Federal

Annals of Congress, 5, 7, 12, 13, 14, 15 Congresses. Washington: Gales and Seaton.

Carter, Clarence Edwin (ed.), *The Territory of Alabama, 1817-1819,* vol. XVIII, in *Territorial Papers of the United States.* Washington: Government Printing Office, 1952.

Carter, Clarence Edwin (ed.), *The Territory of Mississippi, 1798-1817,* vols. V and VI, in *Territorial Papers of the United States.* Washington: Government Printing Office, 1937-1938.

Congressional Globe, 29, 40, 56 Congresses. Washington, Office of the Congressional Globe.

Ku Klux Report, February 19, 1872, *Senate Reports,* 42 Cong., 2 Sess., No. 41, 13 vols. Washington: Government Printing Office, 1872.

Report of Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States. Washington, Government Printing Office, 1872.

Rowell, Charles H. (comp.), *A Historical and Legal Digest of all the Contested Election Cases in the House of Representatives. . . .* Washington: Government Printing Office, 1901.

Thorpe, Francis Newton (ed.), *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies,* 7 vols. Washington: Government Printing Office, 1909.

United States Census Reports, Fourth (1820), Tenth (1880), Twelfth (1900), Thirteenth (1910). Washington: Government Printing Office.

United States House of Representatives Reports, 54 Cong., 1 Sess., Nos. 572, 1121, 1122, 2006. Washington: Government Printing Office, 1896. 55 Cong., 2 Sess., Nos. 284, 597. Washington: Government Printing Office, 1898. 56 Cong., 1 Sess., No. 327. Washington: Government Printing Office, 1900.

United States Senate Miscellaneous Documents, 53 Cong., 3 Sess., No. 67. Washington: Government Printing Office, 1895.

United States Senate Report, 54 Cong., 1 Sess., No. 447. Washington: Government Printing Office, 1896.

United States Statutes at Large, vols. I-III, VII. Boston: Charles C. Little and James Brown.

United States Supreme Court Reports, vol. 94 (1877)-vol. 195 (1903).

2. State Documents

Acts of the Alabama Territorial Legislature, 1 Sess. (St. Stephens, 1818).

Acts of the Alabama Territorial Legislature, 2 Sess. (St. Stephens, 1818).

Acts Passed at the First Session of the Alabama Territorial Legislature, 1 Sess. St. Stephens, 1818.

Acts Passed at the Second Session of the Alabama Territorial Legislature, 2 Sess. St. Stephens, 1818.

Acts of the Board of Education and Board of Regents of the State of Alabama. 1869-1874. Montgomery: 1869-1875.

Acts of the General Assembly of the State of Alabama, 1819-1901. Cahaba, Tuscaloosa, and Montgomery: 1819-1901.

Alabama Official and Statistical Register, 1903, 1907, 1911, 1913. Montgomery: Brown Printing Company, 1903, 1907, 1911, 1913.

Clay, C. C., *Digest of the Laws of the State of Alabama.* Tuscaloosa: M. J. Slade, 1843.

Constitution of the State of Alabama Adopted August 2d, 1819. Huntsville: John Boardman, 1819.

Constitution of the State of Alabama and Amendments. Wetumpka: Wetumpka Printing Co., 1946.

Journal of the Board of Education and Board of Regents of the State of Alabama, 1869-1874. Montgomery: 1869-1875.

Journal of the Convention of the Alabama Territory Begun July 5, 1819. Huntsville: John Boardman, 1819.

Journal of the Constitutional Convention of the State of Alabama Assembled in the City of Montgomery, September 6, 1875. Montgomery: W. W. Screws, 1875.

Journals of the House of Representatives of the State of Alabama, 1819-1901. Cahaba, Tuscaloosa, and Montgomery.

Journal of the Legislative Council of the Alabama Territory. St. Stephens: Thomas Eastin, 1818.

Journal of the Proceedings of the Constitutional Convention of the State of Alabama Held in the City of Montgomery, September 12, 1865. Montgomery: Gibson and Whitfield, 1865.

Journal of the Proceedings of the Constitutional Convention of the State of Alabama Held in the City of Montgomery Commencing May 21, 1901. Montgomery: The Brown Printing Company, 1901.

Journals of the Senate of the State of Alabama, 1819-1901. Cahaba, Tuscaloosa, and Montgomery.

Journal of the Territorial House of Representatives. St. Stephens: Thomas Eastin, 1818.

Martin, William L., *The Code of Alabama Adopted by Act of the General Assembly of the State of Alabama Approved February 16, 1897.* 2 vols. Atlanta: The Foote and Davies Co., 1897.

Minor, Henry (ed.), *Reports of Cases Argued and Determined in the Supreme Court of Alabama.* New York: Collins and Hannay, 1829.

O'Neal, Emmet, *Constitutional Convention, Necessity for New Constitution.* Montgomery: Brown Printing Company, 1915.

O'Neal, Emmet, *Distrust of State Legislatures, The Cause; The Remedy.* Montgomery: Brown Printing Company, 1913.

O'Neal, Emmet, *Educational Reform and a New Constitution.* Montgomery: Brown Printing Company, 1914.

O'Neal, Emmet, *Strengthening the Power of the Executive.* Montgomery: Brown Printing Company, 1911.

Official Journal of the Constitutional Convention of the State of Alabama Held in the City of Montgomery, November 5, 1867. Montgomery: Barrett and Brown, 1868.

Official Proceedings of the Constitutional Convention of the State of Alabama, May 21, 1901, to September 3, 1901. Montgomery: Brown Printing Company, 1901. This publication, popularly called the "stenographic report of the convention" contains a *verbatim* account of the convention in newspaper form during its entire session, including ordinances, reports, documents, petitions, and debates.

Official Proceedings of the Constitutional Convention of the State of Alabama, May 21, 1901, to September 3, 1901, 4 volumes. Wetumpka: Wetumpka Printing Co., 1940. A reprint in book form of the Official Proceedings first printed in newspaper form in 1901.

Ordinances and Constitution of the State of Alabama, with the Constitution of the Provisional Government of the Confederate States of America. Montgomery: Barrett, Wimbish and Company, 1861.

Report of the Commissioners to Adjust and Liquidate the Indebtedness of the State of Alabama. Montgomery: W. W. Screws, 1876.

Report of the Judiciary Committee to Whom Was Referred the Resolution of Inquiry into Alleged Illegal Use, or Unlawful Application of . . . the School Fund. Montgomery: John G. Stokes and Co., 1870.

Report of the Joint Committee of the General Assembly of Alabama in Regard to Alleged Election of George E. Spencer as United States Senator, together with Memorial and Evidence. Montgomery: W. W. Screws, 1875.

Report of the Joint Committee on the Governor's Message on the Public Debt. Montgomery: W. W. Screws, 1876.

Report of the Joint Committee in Regard to Amendment of the Constitution. Montgomery: W. W. Screws, 1875.

Reports of the Supreme Court, vol. 59 (1879)-vol. 136 (1903).

Rowland, Dunbar (ed.), *Mississippi Territorial Archives, 1798-1803, Executive Journals of Governor Winthrop Sargent and Governor Charles Cole Claiborne,* vol. I. Nashville: Brandon Printing Co., 1905.

Rules of the Constitutional Convention of 1901 with Lists of Standing Committees, the Officers of the Convention, and a Roll of the Delegates. Montgomery: Brown Printing Co., 1901.

Smith, William Russell, *History and Debates of the People of Alabama begun and held in the City of Montgomery on the Seventh Day of January, 1861.* Montgomery: Pfister and Co., 1861.

Speech of Hon. Thomas W. Coleman in Support of Majority Report of the Committee on Suffrage and Elections, July 23, 1901. Montgomery: Brown Printing Co., 1901.

Speech of Hon. R. M. Cunningham in Support of the Majority Report of the Committee on Suffrage and Elections, July 27, 1901. Montgomery: Brown Printing Co., 1901.

Speeches of William C. Oates, a Delegate from the State at Large, in the Constitutional Convention of Alabama Held at Montgomery in 1901. Montgomery: Brown Printing Co., 1903.

Statutes of the Mississippi Territory. Natchez: 1816.

Stewart, George N. (ed.), *Reports of Cases Argued and Determined in the Supreme Court of Alabama.* Tuscaloosa: M. J. Slade, 1830.

Suffrage Provisions from the Constitutions of the States . . . and the Constitution of the United States. Montgomery: Brown Printing Co., 1901.

Toulmin, Harry, *Digest of Laws of the State of Alabama,* New York: Ginn and Curtis, 1823.

III. CONTEMPORARY SPEECHES, BOOKS, ARTICLES, PERIODICALS, AND PAMPHLETS

Appleton's Annual Cyclopaedia and Register of Important Events, vol. V (1865), vols. VII-VIII (1867-1868), vol. XV (1875), vols. IV-VIII (1899-1903), new series. New York.

Aptheker, Herbert, *A Documentary History of the Negro People in the United States.* New York: The Citadel Press, 1951.

Bulletin of National Committee to Abolish the Poll Tax. Washington: 1943.

Commager, Henry Steele (ed.), *Documents of American History.* New York: F. S. Crofts and Co., 1943.

DuBose, John Witherspoon (James K. Greer, ed.), *Alabama's Tragic Decade: Ten Years of Alabama, 1865-1874.* Birmingham: Webb Book Co., 1940.

DuBose, John Witherspoon, A Series of Articles on Alabama History from 1867 to 1900, in Birmingham *Age-Herald,* June 22, 27, 28, 29, July 12, 1914.

Fleming, Walter Lynwood (ed.), *Documentary History of Reconstruction,* 2 vols. Cleveland: Arthur H. Clark Co., 1907.

Herbert, Hilary Abner and others, *Why the Solid South? Or Reconstruction and Its Results.* Baltimore: R. N. Woodward and Co., 1890.

Hodgson, Joseph, *The Cradle of the Confederacy.* Mobile: Register Publishing Office, 1876.

Messages of Alabama's Governors to the Legislature. *Journals of the Senate of the State of Alabama,* 1865-1901. Montgomery.

Morgan, John Tyler, "Negro Suffrage in the South," *Congressional Record,* XXXIII (56 Cong., 2 Sess.), 670-675.

Murphy, Edgar Gardner, *The Basis of Ascendancy.* New York: Longmans Green, 1910.

Murphy, Edgar Gardner, *Problems of the Present South.* New York: The Macmillan Co., 1904. Second edition, 1909.

O'Neal, Emmet, *The State Constitution; A Review of Alabama's Constitutional History and Suggestions of Constitutional Reform: An Address by the Honorable Emmet O'Neal before the Alabama State Bar Association at Birmingham, Alabama, July 13, 1917.* Montgomery: 1917.

O'Neal, Emmet, *Representative Government and the Common Law: A Study of the Initiative and Referendum. An Address Delivered at the 143D Banquet of the Chamber of Commerce of the State of New York, November 16, 1911.* New York: Press of Chamber of Commerce, 1911.

"Original Draft of the Constitution of 1819 as Reported by the Committee of 15," in Mobile *Commercial Register,* July 6, 8, 10, 1830.

Original Laws of the Mississippi Territory, enacted 1799-1800 by Governor Winthrop Sargent and the Territorial Judges. Historical Records Survey, Works Progress Administration, Jackson, Mississippi: 1939.

Screws, Benjamin H., *The "Loil" Legislature of Alabama: Its Ridiculous Doings and Non-Sensical Sayings—held in Montgomery, July and August, 1868.* Montgomery: R. W. Offutt and Co., 1868.

Thomas, William H., *The Birth and Growth of the Constitution of Alabama.*

An Address Delivered Before the Alabama State Bar Association at Montgomery June 15, 1900. Montgomery: 1900.

The State Must not Stop Its Progress. Business Men Declare in Favor of a Constitutional Convention. Birmingham: 1896.

Washington, Booker T., *Up From Slavery, an Autobiography.* New York: Doubleday, Page and Co., 1901.

World Almanac and Encyclopedia, 1911, 1915. New York: The New York World, 1910, 1914.

IV. NEWSPAPERS

Birmingham *Age-Herald,* 1899-1901.
Birmingham *State Herald,* 1895-1896.
Birmingham *Alabama True Issue,* 1880-81.
Cahawba *Alabama State Intelligencer,* 1829-1830.
Cahawba *Press and Alabama Intelligencer,* 1821-1826.
Cahawba *Alabama Watchman,* 1820.
Florence *Alabama Gazette,* 1849-1851.
Greensboro *Alabama Beacon,* 1843-1853.
Greensboro *Halcyon,* 1823-1824.
Greenville *Advocate,* 1886-1889.
Huntsville *Alabama Advocate,* 1865-1868.
Huntsville *Alabama Republican,* 1819-1825.
Huntsville *Democrat,* 1827-1850.
Huntsville *Southern Advocate,* 1828-1861.
Jacksonville *Republican,* 1845.
Mobile *Advertiser,* 1849-1852.
Mobile *Argus,* 1822-1823.
Mobile *Commercial Register,* 1829-1839.
Mobile *Gazette and Commercial Advertiser,* 1819-1820.
Mobile *Gazette and General Advertiser,* 1820-1821.
Mobile *Item,* 1899-1901.
Mobile *Nationalist,* 1867-1868.
Mobile *Register,* 1860-1861, 1865, 1867-1868, 1875-1902.
Mobile *Register and Journal,* 1845.
Mobile *Alabama Tribune,* 1849.
Montgomery *Advertiser,* 1860-1861, 1865, 1875-1903.
Montgomery *Alabama Journal,* 1828-1856.
Montgomery *Alabama State Journal,* 1874-1876.
Montgomery *Confederation,* 1861.
Montgomery *Daily State Sentinel,* 1867-1868.
Montgomery *Daily Mail,* 1859-1861, 1867-1868.
Montgomery *Weekly Advertiser,* 1867-1868.
Montgomery *Weekly Mail,* 1861.
New York *Herald,* 1865-1868.
New York *Times,* 1867-1868.
New York *World,* 1865-1868.
Prattville *Autauga Citizen,* 1853-1868.
Prattville *Southern Statesman,* 1859-1861.

Selma *Daily Messenger,* 1866-1868.
Selma *Times and Messenger,* 1868.
Selma *Weekly Messenger,* 1867-1868.
Tuscaloosa *American,* 1898.
Tuscaloosa *Alabama Independent Monitor,* 1844-1846.
Tuscaloosa *Chronicle,* 1827-1829.
Tuscaloosa *Alabama State Intelligencer,* 1829-1831.
Tuscaloosa *Inquirer,* 1831.
Tuscaloosa *Journal,* 1894.
Troy *Southern Advertiser,* 1861.
Washington, D. C. *National Intelligencer,* 1819.
Wetumpka *Argus,* 1840-1844.
Wetumpka *Argus and Commercial Advertiser,* 1839-1840.
Wetumpka *Elmore Standard,* 1867.

B. SECONDARY SOURCES

I. Monographs, Biographies, and Special Studies

Abernethy, Thomas Perkins, *The Formative Period in Alabama, 1815-1828.* Montgomery: Brown Printing Co., 1922.

Allen, Lee Norcross, The Woman Suffrage Movement in Alabama. Unpublished Master's thesis, Alabama Polytechnic Institute, 1949.

Armes, Ethel M., *The Story of Coal and Iron in Alabama.* Birmingham: Chamber of Commerce, 1910.

Bates, Newton Whitmarsh, *History and Civil Government in Alabama.* Florence: Herald Publishing Co., 1892.

Beale, Howard K., *The Critical Year; A Study of Andrew Johnson and Reconstruction.* New York: Harcourt, Brace and Co., 1930.

Bond, Horace Mann, *Negro Education in Alabama, A Study in Cotton and Steel.* Washington: Associated Publishers Incorporated, 1939.

Brantley, William H., *Chief Justice Stone of Alabama.* Birmingham: Birmingham Publishing Co., 1943.

Brantley, William H., *Three Capitals: A Book About the First Three Capitals of Alabama.* Boston: The Author, 1947.

Buck, Paul H., *The Road to Reunion, 1865-1900.* Boston: Little Brown, 1937.

Caffey, Francis G., *Suffrage Limitations at the South.* New York: 1905. Reprint of Francis G. Caffey, "Suffrage Limitations at the South," in *Political Science Quarterly,* XX (1905).

Clark, John Bunyan, *Populism in Alabama.* Auburn: The Auburn Printing Co., 1927.

Clark, Willis Gaylord, *History of Education in Alabama.* Bureau of Education, Circular of Information, Whole No. 163. Washington: Government Printing Office, 1889.

Collins, Charles Wallace, *Whither Solid South? A Study in Politics and Race Relations.* New Orleans: Pelican Publishing Co., 1947.

Collins, Helen, The Alabama Territory, 1817-1819. Unpublished Master's thesis, Alabama Polytechnic Institute, 1941.

Denman, Clarence Phillips, *The Secession Movement in Alabama.* Montgomery: Alabama State Department of Archives and History, 1933.

Dodd, Walter Farleigh, *Revision and Amendment of State Constitutions* in Johns Hopkins University *Studies in History and Political Science,* No. 1, Baltimore: The Johns Hopkins Press, 1910.

Dorman, Lewy, *Party Politics in Alabama from 1850-1860.* Wetumpka: Wetumpka Printing Co., 1935.

Doster, James F., *Alabama's First Railroad Commission, 1881-1885.* University, Alabama: Author, 1949.

Draughon, Ralph Brown, A History of Alabama Bond Issues. Unpublished Master's thesis, Alabama Polytechnic Institute, 1929.

DuBois, W. E. Burghardt, *Black Reconstruction, 1860-1880.* Philadelphia: Harcourt, Brace and Co., 1935.

DuBois, W. E. Burghardt, *The Negro.* New York: Henry Holt and Co., 1915.

DuBose, John Witherspoon, *The Life and Times of William Lowndes Yancey.* Birmingham: Roberts and Son, 1892.

Farmer, Hallie, *The Legislative Process in Alabama: Legislative Apportionment.* University, Alabama: Bureau of Public Administration, 1944.

Farmer, Hallie, *The Legislative Process in Alabama: Local and Private Legislation.* University, Alabama: Bureau of Public Administration, 1944.

Fleming, Walter Lynwood, *Civil War and Reconstruction in Alabama.* Chicago: S. J. Clarke Publishing Co., 1906.

Franklin, John Hope, *From Slavery to Freedom: A History of American Negroes.* New York: Alfred A. Knopf, 1947.

Going, Allen Johnston, *Bourbon Democracy in Alabama, 1874-1890.* University, Alabama: University of Alabama Press, 1951.

Green, Fletcher Melvin, *Constitutional Development in the South Atlantic States, 1776-1860.* Chapel Hill: The University of North Carolina Press, 1930.

Green, Fletcher Melvin, "Some Aspects of the Convict Lease System" in Green, Fletcher Melvin (ed.), *Essays in Southern History,* Chapel Hill: University of North Carolina Press, 1949.

Hicks, John Donald, *The Populist Revolt.* Minneapolis: University of Minnesota Press, 1931.

Jack, Theodore Henley, *Sectionalism and Party Politics in Alabama, 1819-1842.* Menasha, Wisconsin: George Banta Publishing Co., 1915.

Jarrell, Hampton M., *Wade Hampton and the Negro: The Road not Taken.* Columbia: University of South Carolina Press, 1949.

Johnson, Charles S., *The Negro in American Civilization.* New York: Henry Holt and Co., 1930.

Jones, Allen Woodrow, A History of the Development of the Direct Primary in Alabama. Unpublished Master's thesis, Alabama Polytechnic Institute, 1953.

Key, V. O., *Southern Politics in the State and Nation.* New York: Alfred A. Knopf, 1949.

Kirwan, Albert D., *Revolt of the Rednecks. Mississippi Politics: 1876-1925.* Lexington: University of Kentucky Press, 1951.

Lewinson, Paul, *Race, Class, and Party: A History of Negro Suffrage and White Politics in the South.* London: Oxford University Press, 1932.

Mayfield, James J., *Constitutions of 1875 and 1901, Paralleled, Annotated and Indexed.* Nashville: Marshall and Bruce, 1904.

McCorvey, Thomas Chalmers, *Government of the People of the State of Alabama.* Philadelphia: Eldredge and Brothers, 1895.

McDanel, Ralph Clipman, *The Virginia Constitutional Convention of 1901-1902. Johns Hopkins University Studies in Historical and Political Science.* Series XLVI, No. 3. Baltimore: The Johns Hopkins Press, 1928.

McKinley, Albert E., *The Suffrage Franchise in the Thirteen Colonies in America.* Philadelphia: Ginn and Co., 1905.

McMillan, Malcolm Cook, A History of the Alabama Constitution of 1901. Unpublished Master's thesis, University of Alabama, 1940.

Mabry, William Alexander, The Disfranchisement of the Negro in the South. Unpublished Doctoral dissertation, Duke University, 1933.

Mabry, William Alexander, *The Negro in North Carolina Politics Since Reconstruction. Historical Papers of the Trinity College Historical Society,* Series XXIII. Durham: Duke University Press, 1940.

Mangum, Charles S., *The Legal Status of the Negro.* Chapel Hill: University of North Carolina Press, 1940.

Martin, Roscoe Coleman, *The Growth of State Administration in Alabama.* University, Alabama: Bureau of Public Administration, 1942.

Miller, Kelley, *Out of the House of Bondage.* New York: Neale Publishing Co., 1914.

Myrdal, Gunnar, *An American Dilemma: The Negro Problem and Modern Democracy,* 2 vols. New York: Harper and Brothers, 1944.

Page, Thomas Nelson, *The Negro: The Southerner's Problem.* New York: Charles Scribner's Sons, 1904.

Porter, Kirk H., *A History of Suffrage in the United States.* Chicago: University of Chicago Press, 1918.

Report on a Survey of the Organization and Administration of the State and County Governments of Alabama. 5 vols., Institute for Government Research of the Brookings Institution. Washington, D. C.: 1932.

Report of the Thirteenth Annual Policy Conference on Democracy and the Constitution, Local Government and Democracy, Democracy and Representation. Montgomery: Alabama Policy Committee, 1945.

Robinson, William Morrison, *Justice in Grey: A History of the Judicial System of the Confederate States of America.* Cambridge, Massachusetts: Harvard University Press, 1941.

Saye, Albert Berry, *A Constitutional History of Georgia, 1732-1945.* Athens: University of Georgia Press, 1948.

Sellars, James Benson, *Slavery in Alabama.* University, Alabama: University of Alabama Press, 1950.

Sellars, James Benson, *History of the University of Alabama, 1818-1902,* vol. I. University, Alabama: University of Alabama Press, 1953.

Shanks, Henry Thomas, "Conservative Constitutional Tendencies of the Virginia Secession Convention," Fletcher M. Green (ed.), *Essays in Southern History.* Chapel Hill: University of North Carolina Press, 1949.

Skaggs, William H., *The Southern Oligarchy, An Appeal in Behalf of the Silent Masses of Our Country Against the Despotic Rule of the Few.* New York: The Devin-Adair Co., 1924.

Skinner, Thomas E., *Alabama Constitution Annotated.* Birmingham: Birmingham Printing Co., 1938.

Smith, Charles W. and Holloway, William Vernon, *Government and Politics in Alabama.* University, Alabama: University Supply Store, 1941.

Smith, Samuel Denny, *The Negro in Congress, 1870-1901.* Chapel Hill: University of North Carolina Press, 1940.

Smith, W. Roy, "Negro Suffrage in the South," *Studies in Southern History and Politics.* New York: Columbia University Press, 1914.

Somerville, Henderson M., "Trial of the Alabama Supreme Court Judges in 1829," *Report of the Twenty-Second Annual Meeting of the Alabama State Bar Association,* Montgomery: 1899.

Sparkman, John, The Kolb-Oates Election. Unpublished Master's thesis, University of Alabama, 1924.

Stephenson, Gilbert Thomas, *Race Distinctions in American Law.* New York: D. Appleton and Co., 1910.

Summersell, Charles G., A Life of Reuben F. Kolb. Unpublished Master's thesis, University of Alabama, 1930.

Swearingen, Mack, *Early Life of George Poindexter.* New Orleans: Tulane University Press, 1934.

Thach, Harry Smith, The Alabama Constitutional Convention of 1901, Unpublished Master's thesis, Alabama Polytechnic Institute, 1939.

Thomas, James D., Alabama Constitutional Convention of 1867. Unpublished Master's thesis, Alabama Polytechnic Institute, 1947.

Tindall, George Brown, *South Carolina Negroes, 1877-1900.* Columbia: University of South Carolina Press, 1952.

Tompkins, Alma Cole, *Charles Tait.* Auburn, Alabama: Alabama Polytechnic Institute Historical Studies, 1910.

Ware, Ethel K., *A Constitutional History of Georgia.* New York: Columbia University Press, 1947.

Weeks, Stephen B., *History of Public School Education in Alabama.* U. S. Bureau of Education Bulletin, 1915, No. 12, Whole No. 637. Washington: Government Printing Office, 1915.

Wharton, Vernon Lane, *The Negro in Mississippi, 1865-1890. The James Sprunt Studies in History and Political Science,* vol. 28. Chapel Hill: The University of North Carolina Press, 1947.

Work, Monroe N., *Negro Year Book: An Annual Encyclopedia of the Negro.* Tuskegee Institute, Alabama: Negro Year Book Publishing Co., 1912.

Wright, John Peavy, The Limited Quadrennial Legislative Session of Alabama. Unpublished Doctoral dissertation, Harvard University, 1932.

II. HISTORIES OF ALABAMA, THE SOUTH, AND GENERAL WORKS

Beard, Charles, *Contemporary American History.* New York: The Macmillan Co., 1914.

Brewer, Willis, *Alabama: Her History, Resources, War Record, and Public Men.* Montgomery: Barrett and Brown, 1872.

Brown, William Garrott, *A History of Alabama.* New York: University Publishing Co., 1900.

Brown, William Garrott, *The Lower South in American History.* New York: The Macmillan Co., 1902.

Chandler, Julian Alvin Carroll, *et al.* (eds.), *The South in the Building of the Nation,* 13 vols. Richmond: The Southern Historical Society, 1909-1913.

Coulter, E. Merton, *The Confederate States of America, 1861-1865,* volume VII of *A History of the South.* Baton Rouge: Louisiana State University Press, 1950.

Coulter, E. Merton, *The South During Reconstruction, 1865-1877.* Volume VIII of *A History of the South.* Baton Rouge: Louisiana State University Press, 1947.

DuBose, Joel C., *Notable Men of Alabama,* 2 vols. Atlanta: Southern Historical Association, 1904.

Johnson, Allen and Dumas Malone (eds.), *Dictionary of American Biography,* 20 vols., index and supplement. New York: Charles Scribner's Sons, 1928-1944.

Hamilton, Peter J., *The Reconstruction Period.* Volume XVI of Guy C. Lee and Francis N. Thorpe (eds.), *The History of North America,* 20 vols. Philadelphia: George Barrie and Sons, 1903-1907.

McLaughlin, Andrew C., *A Constitutional History of the United States.* New York: D. Appleton-Century Co., 1935.

Miller, Lawrence D., *History of Alabama.* Birmingham: The Author, 1901.

Moore, Albert Burton, *History of Alabama.* University, Alabama: University Supply Store, 1934.

Moore, Albert Burton, *History of Alabama and her People,* 3 vols. Chicago: American Historical Society, 1927.

Northern Alabama: Historical and Biographical. Birmingham: Smith and DeLand, 1888.

Oberholtzer, Ellis Paxson, *History of the United States Since the Civil War,* 5 vols. New York: The Macmillan Co., 1917-1937.

Owen, Thomas McAdory, *A Bibliography of Alabama.* Reprinted from Annual Report of the American Historical Association, 1897. Washington: Government Printing Office, 1898.

Owen, Thomas McAdory, *History of Alabama and Dictionary of Alabama Biography,* 4 vols. Chicago: S. J. Clarke Publishing Co., 1921.

Paxson, Frederick Logan, *History of the American Frontier, 1763-1893.* Boston: Houghton Mifflin Co., 1924.

Phillips, Ulrich Bonnell, *Life and Labor in the Old South.* Boston: Little, Brown and Co., 1929.

Pickett, Albert James, *History of Alabama and Incidentally of Georgia and Mississippi from the Earliest Period.* Sheffield, Alabama: Republished by Robert C. Randolph, 1896.

Rowland, Dunbar, *Courts, Judges, and Lawyers of Mississippi, 1798-1935.* Jackson, Mississippi: State Department of Archives and History and the Mississippi Historical Society, 1935.

Sydnor, Charles S., *The Development of Southern Sectionalism, 1819-1848.*

Volume V of a *History of the South.* Baton Rouge: Louisiana State University Press, 1948.

Woodward, C. Vann, *Origins of the New South, 1877-1913.* Volume IX of a *History of the South.* Baton Rouge: Louisiana State University Press, 1951.

III. PERIODICAL ARTICLES

Abramowitz, Jack, "The Negro in the Agrarian Revolt," *Agricultural History,* XVIV (April, 1950), 89-95.

"The Alabama Case," *Outlook,* LXXIV (May, 1903), 95.

"The Alabama Decision," *Nation,* LXXVI (April, 1903), 346.

"Alabama's New Constitution," *Outlook,* LXIX (November, 1901), 751.

Brewer, W. M., "The Poll Tax and the Poll Taxers," *Journal of Negro History,* XXIX (July, 1944), 260-299.

"Disfranchisement in Alabama," *Outlook,* LXVIII (May, 1901), 2-3.

Doster, James F., "Alabama's Political Revolution of 1904," *The Alabama Review,* VII (April, 1954), 85-98.

Doster, James F., "The Influence Upon Alabama of Georgia's Regulation of Railroads," *Georgia Historical Quarterly,* XXXVII (March, 1953), 39-51.

Doster, James F., "Railroad Domination in Alabama, 1885-1905," *The Alabama Review,* VII (July, 1954), 186-198.

Draughon, Ralph B., "Some Aspects of the History of Alabama Bond Issues," *The Alabama Review,* VI (July, 1953), 163-174.

Fitts, Albert N., "The Confederate Convention," *The Alabama Review,* II (April, 1949), 83-99 (July, 1949), 189-210.

Going, Allen J., "The Establishment of the Alabama Railroad Commission," *Journal of Southern History,* XII (1946), 366-385.

Jordan, Welmouth T., "Early Ante-Bellum Marion, Alabama: A Black Belt Town," *The Alabama Historical Quarterly,* V (Spring, 1943), 12-31.

Jordan, Weymouth T., "Noah B. Cloud's Activities on Behalf of Southern Agriculture," *Agricultural History,* XXV (April, 1951), 53-58.

Keifer, Joseph Warren, "Power of Congress to Reduce Representation in Congress and in the Electoral College: A Reply," *North American Review,* CLXXXII (February, 1906), 228-238.

Halstead, Murat, "The Nullifiers of the Constitution," *Forum,* IV (1888), 379.

Knox, John B., "Reduction of Representation in the South," *Outlook,* LXXIX (1905), 169-171.

McKinley, A. E., "Alabama Constitutional Convention," *Annals of American Academy of Political and Social Science,* XIX (1902), 143-145.

McKinley, A. E., "Two New Southern Constitutions," *Political Science Quarterly,* XVIII (September, 1903), 480-511.

McMillan, Malcolm Cook, "The Alabama Constitution of 1819: A Study of Constitution Making on the Frontier," *The Alabama Review,* III (October, 1950), 263-285.

McMillan, Malcolm Cook, "The Selection of Montgomery as Alabama's Capital," *The Alabama Review,* I (April, 1948), 79-90.

Miller, Kelley, "The Race Problem in the South: A Negro's View," *Outlook,* LX (December, 1898), 1059-1063.

Milton, George Fort, "Black Ballots in the White South," *Forum,* LXXVIII (December, 1927), 906-913.

Moore, Albert Burton, "Railroad Building in Alabama During the Reconstruction Period," *Journal of Southern History,* I (November, 1935), 421-441.

Nuermberger, Ruth Ketring, "The 'Royal Party' in Early Alabama Politics," *The Alabama Review,* VII (April, 1953), 81-98 (July, 1953), 198-212.

Poe, Clarence H., "Suffrage Restrictions in the South; Its Causes and Consequences," *North American Review,* CLXXV (1902), 534-543.

"Politics and the Race Question in Alabama," *The Nation,* LIX (September, 1894), 211-212.

Reynolds, Alfred W., "The Alabama Negro Colony in Mexico, 1894-1896," *The Alabama Review.* V (October, 1952), 243-268, VI (January, 1953), 31-58.

Roberts, Frances, "William Manning Lowe and the Greenback Party in Alabama," The *Alabama Review,* V (April, 1952), 100-121.

Thrasher, Max Bennett, "The Alabama Constitutional Convention," *Outlook,* LXVIII (June, 1901), 437-439.

Weeks, Stephen B., "History of Negro Suffrage in the South," *Political Science Qaurterly,* IX (December, 1894), 671-703.

Wickliffe, John C., "Negro Suffrage a Failure. Shall We Abolish It?" *Forum,* XIV (February, 1893), 797-804.

Williams, Clanton W., "Early Ante-Bellum Montgomery: A Black-Belt Constituency," *Journal of Southern History,* VII (November, 1941), 495-525.

Williams, Frank B., "The Poll Tax as a Suffrage Requirement in the South, 1870-1901," *Journal of Southern History,* XVIII (November, 1952), 469-496.

Work, Monroe Nathan, "Some Negro Members of Reconstruction Conventions and Legislatures and of Congress," *Journal of Negro History,* V (January, 1920), 63-125.

INDEX

Abercrombie, John W., and a new constitution for education, 240, 242; a modern era of public education in Alabama, 240n; a district tax for education, 324; supports 1901 Constitution, 348

Address to people, against 1868 Constitution, 155-156, 178; on Constitution of 1875, 211

Admission Bill (1868), "Pig Iron" Kelley works for, 172; Stevens bill for, 172-173; Republicans favor, 174; Johnson's veto of, 174

Afro-American Exodus Union, 303

Agrarians, and 1875 convention, 175, 190n; favor repudiation of Reconstruction debt, 203-204, 205n; dominate convention of 1875, 209-210; oppose state aid for industry, 236

Agriculture, restrictions harmful to (1875), 209; commissioner of, created (1883), 209

Agricultural and Mechanical College, interest of Noah B. Cloud in, 148n; board of trustees for (1875), 207n; analyzes fertilizer, 209n

Alabama, Washington County created in, 6; name of state (1819), 35 and n; summary of six constitutions, 360-370

Alabama Baptist, supports 1901 Constitution, 348

Alabama Commercial and Industrial Association, works for the Constitution of 1901, 233n; and education, 239-240

Alabama Education Association, and local taxation for schools, 237-238, 239n, 324 and n

Alabama Enabling Act, written and sponsored by Charles Tait, 27; provisions of, 28-29 and notes; suffrage under, 30; power of Congress to place limitations in, 43-44

Alabama platform (1848), and William L. Yancey, 79

Alabama Policy Conference, and vote on 1901 Constitution, 350-351 and n

Alabama Polytechnic Institute, and convention of 1901, 327. See Agricultural and Mechanical College

Alabama Supreme Court, and usury law, 47-48; trial of judges of, 48-49; ruling on interim appointment of state treasurer and comptroller, 74; county tax limits, 236n; local taxation for education, 237-238; local legislation, 240; advocated changes in, 246; Birmingham Amendment, 248n; and registration of a Negro under soldiers clause, 356n

Alabama Territory, suffrage in, 14; act of organization, 23-24; capital of, 23; first session of legislature, 24-25; second session of legislature, 25; basis of representation in, 25; petition for statehood, 26; population in 1818 and 1819, 26; speculation in land in, 26; rapidly passes to statehood, 29

Aldrich, Truman H., contested election case, 219n, 220-221 and n

Aldrich, William F., contested election case, 219n

Amendments and 1819 Constitution, agitation for amending, 47; limited tenure for judges, 48-51; biennial sessions, 51-55; removal of capital (1845), 55-63; removal of capital linked with biennial sessions, 57; popular election of county and circuit judges (1849), 64-67; census amendment (1849), 67; proposed amendments (1819-1861), 68-72; democratic features of 1819 Constitution make many amendments unnecessary, 70; error in biennial sessions amendment, 73; biennial elections but annual sessessions of legislature defeated (1859), 75; on election of comptroller and treasurer defeated (1859), 75

Amendments and 1875 Constitution, the Birmingham Amendment (1895), 234-235; the road tax amendment (1885), 236; the Hundley Amendment, 237-238; local legislation amendment, 241, 247; proposed amendments, 247; difficulties of amending, 247-248; advantages of amendments to, over a convention, 248; Johnston prefers amendments to convention, 256; and power of the executive regarding, 256-257

Amendments and 1901 Constitution, Boswell Amendment, 298n; poll tax

amendment, 300n; many exempt localities from tax limits, 330; biennial sessions (1939), 336n
Amending process, and Constitution of 1819, 43; move to make it easier (1861), 89; 1875 constitution, 208; ineffectual (1875-1901), 223, 251; basis of representation (1901), 307-308, 369; made easier (1901), 338, 344; in nineteenth century, 369, 370
American Federation of Labor, and child labor in Alabama, 316n
Anglo-Saxon, capacity for government, 268; and claims of superiority for, 285
Amnesty, universal amnesty demanded (1867), 128; by the legislature, 132n; and the oath, 90, 91
Anderson, Decatur C., and Board of Education, 179
Applegate, Andrew J., Carpetbagger in convention of 1867, 119, 120, 127; proscription of whites, 130; and election of solicitors (1868), 142; lieutenant governor, 159; Negro suffrage (1868), 159
Appointive power, of governor, 141; used to combat Negro suffrage, 221-222, 365
Apportionment, North Alabama vs. South Alabama (1819), 37, 362; after each state census, 67; periodic reapportionment in Alabama on white basis, 70-71 and notes; "white basis" vs. "federal ratio" for congressional districts, 71n; the Negro and (1865), 102; "white basis" vs. whole population (1865), 104; whole population basis of, under Radical plan, 105; white basis of, adopted (1865), 105; North Alabama won on (1865), 108, 109; on basis of whole population (1868), 136, 150; basis of 1868 favors Black Belt, 175; and convention of 1875, 183, 201-202, 209; Republicans denounce (1875), 212; in Democratic State Convention, 228; in convention of 1901 favored South Alabama, 259, 368-369; and basis of (1901), 306-309; failure of the legislature to reapportion since 1901, 308-309, 369; and sectional fight (1819-1901), 368-369. See representation
Ashby, Irene, and child labor in Alabama, 316n
Attorney-general, proposal to make elective by people (1850's), 69; aid to legislature, 142; board of pardons, 199
Auditor, and board of pardons, 199
Australian ballot, and the ignorant voter, 220n; in Alabama, 224
Autaugaville, contends for capital (1826), 51n, 55

Bankhead, John Hollis, and two party system in Alabama, 260; speaks for 1901 Constitution, 349; mentioned, 226
Banking, provisions in Constitution of 1819, 41-42; proposals to change 1819 Constitution on, 57, 70, 71, 72; and Constitution of 1861, 87; losses incurred by banks in repudiation of state war debt, 101; clauses on suspension of specie payments (1865), 103; 1868 Constitution, 146-147
Barnes, William Hodges, and policy of not voting (1868), 154n
Beddow, Charles P., and the convict lease system, 316
Bell, John, and delegates in 1865 convention, 92; mentioned, 152n
Belmont, O. H. P., mentioned, 311n
Bethea, Tristam B., on debt commission (1875), 203n
Bibb, John Dandridge, delegate to convention of 1819, 33, 34
Bibb, Thomas, delegate to convention of 1819, 32, 33; commented on by John Campbell, 33-34; succeeds brother, 40n; against executive's appointive power, 39; on amending the constitution, 43
Bibb, William Wyatt, appointed governor of Alabama Territory, 24; chooses Cahaba as capital, 25, 55; refuses to run for convention of 1819, 32-33; dies in office, 40n
Biennial sessions, agitation for, 51-55; arguments for and against, 51-52; adopted (1846), 55, 57, 366; amendment shows distrust of the legislature, 68; criticism of, 71, 72; legislature makes error in ratifying amendment, 73; and election of U. S. Senators, 75; annual sessions instead of, adopted (1861), 85, 365; readopted and limited to fifty days (1875), 181, 195, 197n, 209; quadrennial sessions instead of, adopted (1901), 335-336, 365; readopted (1939), 336n
Bill of Rights, of 1819 Constitution, 35; of 1861, 85; of 1865, 103; of 1867, 134; of 1875, 193-195
Bingham, Arthur, Scalawag in convention of 1867, 121
Bingham, Daniel H., the most extreme and important leader in 1867 convention, 116, 119, 120-121, 125n, 127, 132; dominates uneducated Negroes, 118; biographical sketch and description of, 120-121; proscription of whites

130; literacy test for voting, 131; peonage, 134; intermarriage of races, 140; election of judges, 142n; abolition of 70 year restriction for judges, 142n; and agricultural college, 145
Birmingham, hampered by municipal tax limit, 234; and amendments, 234-235, 247-248; the Birmingham Amendment, 247-248, 251; Amendment and Alabama Supreme Court, 248n
Birmingham Board of Education, and a school district tax, 324n
Black, William Henry, Carpetbagger in 1861 convention, 130; proposes literacy test for suffrage, 130
"Black and Tan" Republicans, defend Negro suffrage, 261
Black Belt, demands capital as result of its growing power (1840's), 56, 57, 58, 63; basis of apportionment (1865), 104; Republican strength (1868), 163; Republicans in control of (1874), 175; convention of 1875, 175; votes against 1875 convention, 188; representation reduced (1875), 201-202; four counties of, vote against 1875 Constitution, 216; Negro suffrage a positive good, 217; stronghold of conservatism under Bourbon control, 217; Negro vote, 218n; congressional disdricts, 222; election frauds in, 230; education, 238n, 317-318; wants constitutional convention (1890's), 250; removal of capital and representation, 252; favored by apportionment in 1901 convention, 259; large Negro vote for convention call, 261, 270n; presidency of 1901 convention, 265; committee on suffrage (1901), 267; the convention of 1901, 268-269; suffrage plans (1901), 275; no white disfranchisement pledge, 279; manipulation of Negro vote, 284-285; methods used to defeat Kolb (1892), 284n; suffrage objectives, 285-287; registration of Negro vote, 296-297; vote on calling convention (1901), 297; educational and property qualifications for voting, 297-298; literate Negroes exceed literate whites in some counties, 301, 348n; age span for poll tax, 301-302; paternalistic leaders defend the Negro, 304-305, 324; younger leaders bitter toward Negro, 305; representation in the legislature, 306-309; demands a price for loss of the Negro vote, 306-307; dominates committee on representation (1901), 307n; fear of white counties, 307-308; victory on suffrage and representation, 308-309; loss of popular voting strength (1901), 308n; control of the legislature, 308-309; able leaders in 1901 convention, 309; alignment with the railroads and corporate interests (1901), 310-312, 315, 323, 329, 358; corporate interests make decision on suffrage, 311, 312n, 313n, 315; dominates committee on education (1901), 320; Negro education, 323-324; corporate interests dictate tax article (1901), 329; fears loss of representation (1901), 341n, 352; and use of Negro vote to adopt 1901 Constitution, 340, 347-348, 350-352, 358; and charges they "counted in" 1901 Constitution, 351-352; control of legislature after 1901, 358; select electorate, 358; overwhelming support of 1901 Constitution, 363; dominance in Democratic party during Populist revolt, 368; representation (1819-1901), 368-369. See South Alabama and Conservatives
Blackford, W. T., Carpetbagger in convention of 1867, 119, 120
Blue, M. P., and biographical sketches of delegates (1867), 110n
Board of Education, powers of, especially legislative power, 144, 145, 150, 206n, 366; University of Alabama, 144; calling of convention of 1875, 177, 179, 180; abolished (1875), 206, 209, 211; convention of 1901, 326; mentioned, 160
Bond issues, and popular vote on (1901), 344
Booth, Daniel Boone, and restrictions on removal of capital (1875), 197
Boswell Amendment, on the suffrage (1946), 298n
Boundary line, dispute with Mississippi over, 27 and n
Bourbon County, created by Georgia, 20
Bourbons, Democrats denounced as, 187, 212; the suffrage (1875), 217; "white supremacy" issue, 218; methods used to force Republicans from office, 218ff; use Negro domination issue to prevent reform, 226; state election of 1892, 228; use of primary to combat, 244; reaction under, after 1874, 362; convention of 1875, 362-363; quadrennial elections in sessions, 365, 367; mentioned, 210n. See Black Belt and Conservatives
Bowie, Sidney J., and support of 1901 Constitution, 342n
Bragg, Walter Lawrence, manages campaign for 1875 convention, 177; and Alabama Railroad Commission, 310

Brainard, M. D., Carpetbagger in 1867 convention, 113n, 119, 120
Brandon, W. W., opposes constitutional convention (1898), 251n; supports Constitution of 1901, 342, 349
Breckinridge, John C., and delegates in 1865 convention, 92
Brewer, Leroy, and local and special legislation, 182
Brewer, Willis, opposes 1875 convention, 175n; delegate to proposed 1899 convention, 255n; opposes 1901 Constitution, 343 and n
Brickell, Robert C., advises governor on convention bill repeal, 257n
Brookings Institute, and tax restrictions in Alabama, 320, 329
Brooks, Leslie E., for an effective railroad commission, 315; free pass evil, 315; Roosevelt's Booker T. Washington dinner, 344n
Brooks, William McLin, president of convention of 1861, 78
Brown, Charles G., attorney general, 257n
Browne, Cecil, chairman of committee on taxation (1901), 266; against an effective railroad commission, 318; report of taxation committee, 318-322
Brownlow, "Parson" W. G., a warning to Alabama, 111; militia dynasty, 146, 160-161
Bruin, Peter Bryan, judge of Mississippi Territory, 4; censured and resigns, 9-10
Buchanan, James, mentioned, 92n
Buckley, Charles W., Carpetbagger in convention of 1867, 119, 120; education, 143
Buckley, William M., Carpetbagger in convention of 1867, 119
Buckner, Simon Bolivar, mentioned, 254
Bulger, Thomas L., opposes constitutional convention (1898), 251n; appeal to sentiment on grandfather clause, 288-289; Negro education, 323n
Burnett, John L., supports Constitution of 1901, 342
Burns, John Fielding, and petty crimes clauses of 1901 Constitution, 275n
Burton, Pierce, Carpetbagger in 1867 convention, 119, 120, 130; literacy test for suffrage, 130-131
Bushwhackers, in Civil War, 115
Busteed, Richard, federal judge in Alabama, 125 and n
Bryce Institute, and plan of government, 327
Caffey, Francis G., and select electorate of 1901, 269n
Cahaba, first capital of Alabama, 25-26, 37, 55-56; citizens petition legislature for losses on removal of capital, 56n; wants capital (1845), 60
Calhoon, S. S., and the poll tax, 299
Campbell, John, secretary of convention of 1819, 32, 33; comments on convention of 1819, 33-34
Capital, of Mississippi Territory, 19; compromise on capital for Alabama (1818), 25; federal lands for Alabama (1819), 29; provisions concerning permanent capital (1819), 37; Tuscaloosa's vote against judicial tenure amendment, 51; removal of capital amendment, 55-63; convention called by legislature on removal of, defeated (1839), 57; two-thirds vote of legislature necessary for removal amendment, 60-61; popular vote on removal, 60; legislature's vote on removal, 61; removal forces refuse to separate issue of removal and biennial sessions, 61; Montgomery businessmen built first capitol there, 63; constitutional prohibition against removal (1865), 89; restrictions on removal of (1875), 195, 197; Democratic pledge against removal (1898), 251-252, 255n
"Capitol Assembly," and 1875 Constitution, 196
Carpetbaggers, and registration boards, (1867), 111; convention of 1867, 115, 117-118, 133; represented "black" counties, 118-119; prominent ones in 1867 convention, 119-120; committees (1867), 123-124; violence of speeches, 127; educational tests for suffrage, 131n; segregation, 135-136; afraid to press issue of Negro's civil rights (1867), 135-136, 139; reduced residence requirements for office, 138; intermarriage of the races, 139-140; mixed schools, 145; influence of, on 1868 Constitution, 149-150; Negro suffrage, 152; the militia, 161; religious leaders, 164 and n; leadership in Republican party (1875), 178, 190n; appeal to the poor whites, 186; restrictions on legislature because of (1875), 197-198, 210; state aid to internal improvements, 208; imprint on 1875 Constitution, 210, 362; an issue in ratification of 1875 Constitution, 211; more severe tax limits (1901), 320; prohibition against state aid to internal improvements (1901), 327; growing distrust of the legislature

334; effect on Alabama's Constitution, 366-367
Carraway, John, Negro in convention of 1867, 117; opposes proscription of whites, 129; defends Negro suffrage, 130; segregation, 135; intermarriage of races, 139; equal division of school funds, 145
Census, and state census under 1819 Constitution, 37; constitutional amendment (1849), 67; Constitution of 1865, 105n; federal census used instead of state (1875), 202; apportionment (1901), 369
Centerville, contends for capital (1826), 56
Chambers, Henry, delegate to convention of 1819, 31n, 33n, 34; on election of sheriffs, 39
Chancery courts, attempts to abolish, 201, 246 and n
Chase, Salmon P., advocates Negro suffrage (1865), 95n
Child labor, and convention of 1901, 278n, 316 and n, 339
Churches, and 1901 Constitution, 348
Cities, hampered by tax limits after 1875, 234; tax limits (1901) 327; debt limit, 328. See municipalities
Citizenship, Negro given state citizenship (1868), 134; clause of 1868 omitted (1901), 338
Civil Rights Act, and prohibition in intermarriage, 140
Civil War, checked constitutional reform (1861), 75
Claiborne, William C. C., governor of Mississippi Territory, 5; governor of Territory of Orleans, 5; mentioned, 7
Clanton, General James Holt, reorganizes Democrats (1866), 152-153; speaks against 1868 Constitution, 153; calls Montgomery conference (1868), 154
Clark, James S., and repudiation of state war debt, 101
Clark, John, and ordinance of secession, 98
Clark, Richard Henry, delegate to proposed 1899 convention, 255n
Clay, Clement Comer, writes petition for statehood, 26; delegate to convention of 1819, 31n, 32; reports original draft of Constitution of 1819, 34; opposes viva voce voting, 36n; opposes keeping record in committee of the whole, 36n; "white basis" of apportionment, 37; on succession and election of sheriffs, 39; favors executive veto (1819), 39; against popular election of clerks of court, 40; on the enabling act, 43; against divorce by legislature, 70n
Clay, Clement Claiborne, "fire eater" in 1861, 94
Clayton, Henry D., supports Constitution of 1901, 342, 349
Clemens, Jeremiah, leader of cooperationists, 79; makes minority report on secession, 79-80; opposed to ceding public lands to Confederate government, 82
Clopton, Virginia Clay, and woman suffrage, 278
Cloud, Noah B., commissioner of immigration (1867), 148; article on industrial resources, 148; charges against, as superintendent of education, 206
Cobb, James E., contested election of, 218n, 219n; legislative change of the constitution, 306 and n
Cobb, Rufus W., votes to make Radical constitution the basis of action (1875), 190; against debt repudiation by the convention (1875), 204; frames debt settlement for Houston, 204n
Cochran, John, and constitutional revision (1861), 85, 86
Cofer, William Thomas, opposes constitutional convention (1898), 251n
Coleman, Thomas W., influence in 1901 convention, 265; chairman of committee on suffrage (1901), 266-267; opposes woman suffrage, 278n; presents majority report of suffrage committee, 280-281; disfranchisement of whites, 292; Fifteenth Amendment, 292; employment clause for the suffrage, 298; educational and property qualifications for voting, 298; the Booker T. Washington petition, 302; banking interests, 311; speech on suffrage, 311n; free pass evil, 314
Comer, Braxton Bragg, and Alabama Railroad Commission, 310, 312; reform, 357n
Commissioner of Agriculture and Industry (1901), 337
Commissioner of Agriculture, created (1883), 209n
Commissioner of Industrial Resources (1868), 148, 209
Committee of Fifteen, writes Constitution of 1819, 34; dominated by delegates from the "black" counties, 34; limited tenure for judges, 41; the "plain" men change its report, 44
Committee of the Whole, in convention of 1819, 36 and n

Committees, in 1867 convention, 123; in 1901 convention, 266-267
Committee of Thirteen, on secession, 79
Comptroller of Public Accounts, under Constitution of 1819, 40; proposal for election by people (1850's), 69; annual election by legislature impossible with biennial sessions, 73-74; proposal for biennial election of (1859), 75; and 1861 Constitution, 86
Confederate Constitution, ratified by Alabama convention (1861), 83; item veto, 200
Confederate convention, Alabama convention (1861) elects delegates to and ratifies major decisions of, 83
Confederate courts, and no supreme court, 84n
Confederate veterans, and taxation, 321
Confiscation of property, desired by Thaddeus Stevens, 173n
Congressional districts, gerrymandered (1875-1901), 222
Congressional Plan of Reconstruction, 151-152
Conscientious objectors, and 1875 Constitution, 195
Conservatives, reorganization of the Conservative or Democratic party, 152-153; issues aroused by 1867 convention, 153; policy of not voting (1868), 125, 132, 154-156; refuse to take oath, 126; organize clubs for policy of not voting, 153; address to people (1868), 155-156; bitter attack on 1868 convention and Constitution, 157ff; assail new offices of 1868 Constitution, 161; apathy of (1867), 162; summary of objections to Constitution of 1868, 162n; to discharge Negroes who vote for 1868 Constitution, 164-165; pay all taxes to support Negro schools, 165n; charge 1868 Constitution would destroy industry, 168; charge fraud in 1868 Constitution election, 170n; send delegation to Washington (1868), 170 and n; doubt integrity of Congress (1868), 171; prefer military rule to Constitution of 1868, 173n, 174; discredit 1868 Constitution because of congressional ruthlessness in imposing it on Alabama, 174; to abolish Board of Education, 179; pledges to people (1875), 209; summary of work of, in 1875 convention, 209-210; denunciation of 1868 Constitution (1875), 211; public schools (1875), 213-214; use of Negro vote, 218; want a select electorate, 229-230, 285-286, 363; fear Populist control of a constitutional convention, 230, 249; oppose frequent elections, 244; secure Boswell Amendment (1946), 298n; their great victory on suffrage and representation (1901), 308-309; alignment between the Black Belt and corporate interests (1901), 310-312, 315, 323, 329, 338, 358; control of convention of 1901, 316; favored quadrennial sessions and elections, 336, 365; suffrage decision (1901), 338; use of Negro issue to prevent reform, 338; direct primary, 357-358; skill in ratification fight (1901), 358-359; victory in 1901 Constitution, 362. See Black Belt, Bourbons, and Democrats
Constituent assembly, and constitution making, 361
Constitution making, state constitutions not lasting as the national, 360; in nineteenth century, 360-361; a summary on Alabama's six constitutions, 360-370; reflects history of Alabama, 361-362; submission in Alabama, 369; growing length and inelasticity of Alabama's constitutions, 370
Constitution of 1819, original draft of the constitution, 34; divisions of, 35; universal white manhood suffrage, 35; bill of rights, 35; office holding, 35-36; comparisons with those of other southern and western states, 35-46; provisions concerning capital, 37 and n; banking provisions, 41, 42; slavery, 42, 43; mode of amending, 43; not submitted to people, 44; made more democratic by "plain" men, 44, 46; democratic features, 44-45; conservative features, 45; signing of, 45; influence of aristocracy on, 46; frontier influences on, 46; and the Mississippi Constitution of 1817, 46; agitation for amending, 47; limited tenure for judges amendment, 48-51; biennial sessions amendment, 51-55; removal of the capital amendment, 55-63; popular election of judges amendment (1849), 64-67; census amendment (1849), 67; very democratic, 70; noted for its democracy along with Kentucky Constitution, 363; universal white manhood suffrage, 363. See convention of 1819
Constitution of 1861, preamble of, 85; forbids local legislation, 85; annual sessions of legislature limited to thirty days, 85; limitations on legislature, 85; changes in the executive article, 85-86; slavery, 86; changes in the ju-

diciary article, 86; legislature relieved of divorce cases, 86; limitation on legislature's power to incur debt, 87; banking reforms, 87; submission of, demanded by North Alabama, 89; and Civil War, 361, 362. See convention of 1861

Constitution of 1865, incorporates most of changes made in Alabama's constitution (1861), 103; preamble of, 103; first to provide for conscientious objectors, 103; bill of rights changed with freedmen in mind, 103; power of justice of peace increased, 103; limitations placed on legislature (1865), 103-104; basis of apportionment, 104; prohibits intermarriage of races, 105; proposals for a stronger executive fail, 105; not submitted, 107-108; no radical changes in existing order, 109. See convention of 1865

Constitution of 1868, bill of rights, 134-135, 149; legislative article, 136-140, 149-150; tax limit, 137; duelling, 137; appointment of legislators, 137, 138; internal improvements, 137; protection of legislators, 138; federal and state elections held together, 138; popular election of executive and judicial officials, 140, 141-142, 149; new electorate, 140; executive department, 140-141, 149-150; judiciary article, 141-142, 149; midwestern constitutions, 142-143; education article, 142-146; militia article, 146; corporations article, 146-147; exempted property article, 147; women's rights, 147-148; article on industrial resources, 148; opposition to, in convention, 149; a summary of significant features, 149-150; submitted to people, 151; majority of all registered voters rule, 154; Conservatives adopt policy of not voting on, to defeat, 154-156; issues in campaign for ratification, 158ff; Conservative attack on, 157-158; Negro suffrage, 158-160; proscription of whites, 159; turns government over to non-property holders, 161; credit, 162; summary of objections to, 162n; Negro citizenship, 163; Radicals count on Negro vote for, 163-164; laborer's lien, 166; would encourage industry, 166n; would bring prosperity, 166-167, 168; summary of reasons to vote for, 168; Republicans claim objectionable features to be stricken out, 168n; did not receive a majority of all registered voters, 169, 172; charges of fraud in election on, 169-170; Meade's report on its defeat, 171; Stevens bill for admission under, 172; provisional government proposed under, 173; Conservatives prefer military rule to, 173n; in campaign for 1875 convention, 176-177; Reconstruction debt, 180-181; liberal provisions of, 190n; section on state aid to corporations by two-thirds vote, 196; claims of Conservatives against, 211; the new order, 362; revolution in state politics, 363-364; election of all executive and judicial officials by the people, 365. See convention of 1867

Constitution of 1875, its submission required by the enabling act, 184, 187; its great length and legislative character, 198, 210; executive article, 199-200; vote on, in the convention, 209; summary of work of the convention, 209-210; effect of the Carpetbagger on, 210, 363; a "home rule" constitution, 211; denounced as "Bourbon Democratic," 212; repudiation of debt, 212, 214; popular vote on, 216; forbids educational or property qualifications for voting, 224; an "instrument of prohibition," 233, 363; Negro suffrage, 363. See convention of 1875

Constitution of 1901, basis of representation can't be changed by amending process, 307-308; effect of more severe tax limits on submission vote, 319, 320; need for school district taxation, 325-326; amendments to, 330; local legislation, 332-333; biennial sessions amendment (1939), 336n; much like that of 1875, 339; inelastic and lengthy, 339; submitted to the people, 340; a Black Belt popular majority for predicted, 340; endorsed by Democratic State Committee, 341; campaign committee for, 341; opposition Democrats, 342; campaign slogans, 342; campaign committee against, 342-343; registration boards, 345; campaign for ratification similar to that of 1874, 346; charges that it would be "counted in," 347; churches, 348; organized labor, 348; popular vote on, 350-352; huge Black Belt majorities for, 350-352; areas favoring secession and opposing Populism, 351, 363; disfranchisement of the Negro, 352, 354; disfranchisement of whites, 353-356; result of severe residence requirements, 354; decline in number of voters, 354-356; permanency of disfranchisement, 356; U. S. Supreme Court, 356-357; direct primary, 357-358; Braxton

Bragg Comer's reforms, 357n; decrease in fraud, 358; disfranchises more whites than Negroes, 358-359; drastic break with past on suffrage, 358-359; revolution in state politics, 363-364; suffrage article as undemocratic as that of 1819 democratic, 363, 370; first to make poll tax a prerequisite for voting, 364. See convention of 1901

Constitutional Convention, no specific provision for, under 1819 Constitution, 43; legislature calls convention (1839), 57; defeated by people, 57; proposal for, defeated by the people (1852), 73; proposed by legislature, submission necessary (1856), 74; again defeated, 74; coming of Civil War prevents convention, 75; proviso requiring popular vote to call (1865-1901), 108, 369; question of whether the legislature can limit, 184-185; in order to abolish fraudulent elections (1875-1901), 230; for education, 239-240; primary, 245; the amending process, 247; fears of, after 1861 and 1867, 248; movement for, in 1890's, 249; radicalism in, 249-250; in Democratic caucus and legislature, 251-252; fears of, in 1890's, 251-256; powers of, 253; no pledge to submit Constitution (1899), 253; free silver issue, 254; question of making it a "party issue," 254-255; control by anti-Johnston faction, 254-255; special session of legislature to repeal convention bill, 255-256; opposition to repeal, 256-258; repeal, 257; issue in 1900 campaign, 258; high federal or state officials never served in, in Alabama, 266n; limitations on (1875-1901), 369-370

Contested elections, between 1875 and 1900, 218n, 219-221

Convention of 1819, apportionment in, 25, 27; especial interest aroused in Tennessee Valley, 30; election of delegates, 30 and n; candidates in election for, 31; issues in campaign for, 31; professions and experience of delegates, 31-32; nativity of delegates and length of residence, 32; North Alabama a majority in, 33; letters of John Campbell on, 33-34: See Constitution of 1819

Convention of 1861, calling of, 76; campaign for the convention, 76-77; shades of opinion among cooperationists, 76n; sectionalism as shown by vote on, 77; immediate secessionists in control, 77, 78-79; assumes federal government's functions in interim period, 78; Committee of Thirteen, 79; secession by states the only legal mode of, 80; and passage of legislation, 81; repeals ordinance granting lands to central government, 81-82; continues grants of land to railroads, 82; refuses to cede public lands to Confederate government, 82; continues policy of preemption, 82; secessionists take lead in moving for Confederacy, 82, 83; invites other states to Montgomery, 82-83; elects obscure men to Confederate Convention, 83; opposes reopening of African slave trade, 83; opposes closing of Mississippi River, 83; cooperationists and Confederate government, 83; ratifies Confederate Constitution, 83-84; refuses popular vote on Confederate Constitution, 83-84; ordinances for the interim period, 84; approves election of Davis and Stephens, 85; and constitutional change, 85-89; attempts to strengthen governor's power in, 87-88; conservative tendencies in, 88; move against popular election of judges in, 88; many suggested changes in constitution defeated by, 88-89; refusal to submit questions to popular vote a later issue in Alabama history, 256n, 340. See Constitution of 1861

Convention of 1865, calling of, 90-91; registration and number of votes cast, 91; personnel of, 92; past political affiliations of delegates, 92-93; parties in, 93; delegates less prominent than those of 1861, 93; important committees in, 94; follows lead of Mississippi convention, 94; delegates fear Negro suffrage, 95, 102, 106n; debate on slavery, 95, 96-97; delegates not free agents, 96; Negro's civil rights, 97; ordinance of secession, 98-99, 108; debates on repudiation of state war debt, 99-101; attempts to repudiate other debts, 100; ordinances of a legislative nature, 101-102; congressional districts, 102; pre-Civil War debt, 102; private debt, 102; changes in state constitution, 102-108; Negroes petition for suffrage, 106; primarily a restoration convention, 106; popular election of attorney general and solicitors defeated by, 106; immigration, 106-107; submission of constitution, 107-108; dominated by North Alabama, 108-109; South Alabama leaders discredited, 108; did not favor accepting a revolution, 109, 362. See Constitution of 1865

Convention of 1867, opposition to, 112; and popular vote on calling of, 113; delegates not from county they represented, 113; apportionment in, 113; analysis of delegates to, 114-122; economic, social, and political standing of delegates, 115-116; not a lawyer's convention, 116; Carpetbaggers in, 117, 119-120; Negroes in, 117-118; prominent Scalawags in convention of 1867, 121-123; moderates in, 122; committees appointed in and their importance, 123; Negroes given inferior positions, 123; disfranchisement of whites, 124, 129-130; immigration, 124, 125, 148; majority and minority reports on suffrage, 124-127; disfranchisement of those who refuse to vote, 125, 132; violent speeches of Carpetbaggers, 127; universal suffrage and universal amnesty demanded, 128; Negroes want universal amnesty, 129; literacy test for suffrage, 130; moderates vs. Radicals in, 131, 139n; segregation on common carriers, 134-136; segregation in schools, 145; provides for an agricultural and mechanical college, 145; turns itself into nominating convention, 148n; legislative ordinances of the convention, 148n; stay laws, 148n, 161-162; 56 members of, nominated for office by themselves, 162; effect of, on later movements for a constitutional convention, 256n. See Constitution of 1868

Convention of 1875, and a "home rule" constitution, 175; opposition to, 175, 187, 188n; federal ruthlessness in imposing 1868 Constitution, 176; convention bill, 177; the alien constitution (1868), 176, 178; reasons for calling, 177; economy, 177, 180; Reconstruction debt, 180-181, 194; prohibition on state aid, 180-181; abolishes unnecessary offices, 180, 200, 201, 206; local legislation, 182; to abolish registration oath of 1868, 182-183; apportionment, 183; to encourage immigration and industry, 183; limitations on, 184; question of whether the legislature could limit, 184-185; not to pass ordinances of a legislative nature, 184-185; convention of 1861 an issue in call, 184-185; imprisonment for debt, 186; federal intervention, 186, 194; suffrage, 186, 201; women's rights, 186; educational and property qualifications for voting, 186-187; popular vote on calling of, 187-188; political composition of, 188; presidency of, 189; personnel of, 190; vote to make 1868 Constitution basis of new one, 190n; importance of caucus in, 191-192; rules of, 191-192; refuses verbatim record, 192; legislative ordinances, 192; and committees in, 192; bill of rights, 193-195; legislative department, 195-199; executive department, 199-200; judiciary, 200-201; representation, 201-202; taxation and debt repudiation, 202-205; article on education, 206-207; amending process, 207; Mobile school system, 207; exemptions, 208; pledges to people kept, 209; to prevent extravagance and corruption, 211. See Constitution of 1875

Convention of 1901, and enabling act, 259; endorsed by Democratic State Convention (1900), 259; campaign for calling, 259-260; popular vote on calling, 261; Black Belt vote on calling, 261-262; personnel of, 263-264; presidency of, 264-265; committees in, 266-267; motives behind, 268-270; publication of the debates, 270; submission of new constitution, 270; close vote on call, 270n; dilemma of the suffrage committee, 271; no white disfranchisement pledge, 271, 279-280; plans before suffrage committee, 274-278; grandfather clause, 275-278; New England origins of suffrage plans, 278; woman suffrage, 278-279 and notes; reports of the suffrage committee, 280-282; debates on suffrage, 283-302; a select electorate, 285-286; national conditions make disfranchisement possible, 290-291; vote on temporary plan, 295; registration plans, 296; the permanent plan, 297-302; the poll tax, 298-302; Negro petitions, 302-304; defenders of the Negro, 304-305; constitutionality of temporary plan, 306; vote on the suffrage article, 306; state regulation of railroads, 310-316; fear of corporate influences in, 311-312; petitions for an effective railroad commission, 312-314; petitions against free passes, 312-315; free pass evil, 314; the convict lease system, 316; controlled by the Conservatives, 316; tax limits, 318-320; refunding of state debt, 320; education, 320-325; local taxation for education, 324-325; municipalities, 330-331; local legislation, 331-333; distrust of the legislature, 334-337; quad-

rennial sessions of the legislature, 335-336; quadrennial elections, 336; the executive department, 336-338; sheriffs, 337-338; and the judiciary, 338; apportionment favored South Alabama, 368-369. See Constitution of 1901 and constitutional convention
Convicts, and a constitutional convention to abolish the lease system, 245; the Pratt mines, 311; the 1901 convention and the lease system, 316, 339; road building, 328
Coon, Datus E., Carpetbagger in convention of 1867, 119, 120, 127; Negro suffrage, 126; residence requirements for office, 138n; education (1867), 144; Address to Republicans (1875), 178; against convention of 1875, 178; introduced Board of Education plan in 1868 convention, 179
Cooper, Aaron Burr, and policy of not voting (1868), 154n
Corporations, 1868 article on, from midwestern constitutions, 146-147, 149; state aid to railroads (1868), 147; state, county, or city aid to prohibited (1875), 190, 202-203, 209, 210, 211, 216, 366; fear of, in 1901 convention, 255n, 256n, 311-312; Democratic pledge to continue restrictions on (1901), 255n; pressure on convention of 1901, 279; convention of 1901, 311-312, 313, 315-316; committee on, in 1901 convention, 312; state aid, 328; favor quadrennial sessions, 336; Black Belt dominate 1901 convention, 347
Corporation lawyers, in convention of 1901, 266-267, 311-312
Cotton tax, convention of 1867 petitions against, 148n
Council, in Mississippi Territory, 10-11; functions of, 11; governor could dissolve, 11-12
Council, William H., should be disfranchised, 260n; Negro suffrage, 303-304; pleads for Negro education, 323n
Counties, 900 square mile limitation on, 68; agitation to change limitation, 68, 71, 72, 80; government of, very democratic since 1819, 70; road building, 236; tax limits, 236, 247, 327; 600 square mile limit, 247; debt limits, 328; the "strangulated," 328n
"Courthouse" assembly, and clause in 1875 Constitution to prevent another, 195-196
Courts, and local legislation, 333
Craig, Benjamin H., a Black Belt liberal, 278
Craighead, Erwin, on tax limits, 235; evils of local legislation, 242n; judicial reforms, 246n
Crawford, William H., secretary of treasury and dispenser of federal patronage in Alabama, 19; responsible for Bibb's appointment as governor, 24
Crenshaw, Anderson, trial of, 48
Crenshaw, Walter H., and repeal of ordinance of secession (1865), 94
Crowe, G. B., contested election case, 221
Crowell, John, delegate from Alabama Territory, 25, 28
Crumpacker Bill, and reduction of representation, 355n
Cullom report, cited in Alabama convention (1901), 290
Cunningham, J. B., and education, 239n
Cunningham, Russell M., and Sayre election law, 225; suffrage plan, 274n; woman suffrage, 278; northern editorials against Fifteenth Amendment, 291; influence in 1901 convention, 311; convict lease system, 311n, 316; more severe tax limit, 319; speaks for 1901 Constitution, 349
Curry, J. L. M., elected to Confederate Convention, 83n; works against 1868 Constitution, 154; the suffrage, 305n; supports Hundley Amendment for education, 237; constitutional convention for education, 239 and n

Daniel, John Warwick, and the "fighting grandfather clause," 277
Davis, Jefferson, election of, approved by Alabama convention, 85
Davis, Joseph H., Scalawag in 1867 convention, 124
Davis, Nicholas, leader of cooperationists (1861), 79; challenges William L. Yancey, 80n
Debt, amount of state debt (1852), 72; and Constitution of 1861, 87; debate on repudiation of state war debt (1865), 99-101, 108; pre-Civil War debt; 102; limitation on legislature as to (1865), 103; convention of 1867, 148n, 166n, 168; calling of convention of 1875, 177; commercial interests fear repudiation, 175, 181, 188n; commission on Reconstruction debt, 181; limitations on state, 202-203, 205; repudiation (1875), 203-205; refunding of (1906), 320; limits on (1901), 328. See Reconstruction debt
Delegate, in Mississippi Territory, 12; powers of, 12; elected by people

(1808), 12, 13n; controlled by west in Mississippi Territory, 18-19

Democrats, favor "white basis" of apportionment, 71n; in 1867 convention, 126; regain control (1874), 175; in 1875 convention, 188; decide issues in caucus in 1875 convention, 191; state aid to railroads in Reconstruction period, 196; public schools (1875), 213-214; contested election cases (1875-1900), 218ff; Sayre election law, 223; use of Negro vote, 227-228; constitutional convention (1878), 249; constitutional convention (1892), 249-250; want select electorate, 250; make pledges to allay fears of a convention, 251, 259; the convention bill, 255n; stronghold in Black Belt after 1880, 306, 308; pledge on tax limits and education (1901), 317; opposition to 1901 suffrage article, 340-341, 342, 350, 358; campaign committee for 1901 Constitution, 341; would disfranchise Republicans and Populists, 343; party dominated by Black Belt during Populism, 368. See Conservatives and Bourbons

Denson, William H., opposes 1901 Constitution, 342, 347n, 349-350

Dent, S. H., signs minority report on suffrage (1901), 281

Direct primary, and a new constitution, 244; development of, in Alabama, 244-245; answer to Negro suffrage, 245; *Age-Herald's* suffrage plan (1901), 274n; convention of 1901, 316-317; first statewide (1902), 355n; Constitution of 1901, 357-358. See white primary

Disfranchisement, of whites in Tennessee (1867), 111n; of whites (1868), 124, 126, 139, 158, 159, 162n, 362; whites' motive for 1901 convention, 229-230, 283, 285-286, 347, 363; whites under 1901 Constitution, 293, 309, 346, 353-356, 358-359; decline in number of voters under 1901 Constitution, 354-356; whites with poll tax, 364; whites with residence requirements, 364. See Negro disfranchisement, Negro suffrage, and suffrage

Divorce, and the legislature, 70; legislature relieved of (1861), 86; the 1865 convention, 104; the 1867 convention, 138-139

Douglas, Stephen A., and delegates in 1865 convention, 92; mentioned, 152n

Dowdell, James Ferguson, and debt limitation on legislature, 87

Drake, John, and debate on slavery (1865), 96

Dred Scott decision, North refused to acquiesce in, 96

DuBois, W. E. B., denunciation of Booker T. Washington, 304n

DuBose, John Witherspoon, writes on Reconstruction, 117n

Duelling, and 1868 Constitution, 137; and 1875 Constitution, 195, 197

Dykes, G. J., Conservative in 1867 convention, 114n

Economy, and calling of 1875 convention, 177, 180; highest aim of 1875 convention, 190, 200, 201, 202-203, 206-207, 211, 215, 216, 234, 362. See retrenchment

Education, and sixteenth section (1819), 28, 41; Constitution of 1819, 41; and restrictions on debt (1861), 87; in 1868 Constitution, 142-146; funds for, 144; 1868 article taken from Iowa Constitution, 144; mixed schools, 145, 158, 162n, 165n; significant features of education article (1868), 145, 150; Board of Education, 149-150; in campaign for ratification (1868), 160, 165; John Hardy, 165n; for all children (1868), 166, 168; economy (1875), 179-180; 1875 convention, 184-185, 186, 187, 190, 203, 211; 1875 Constitution, 206-207; appropriations for schools, 206-207; segregation in public schools (1875), 206, 209; 1868 school system partially overthrown (1875), 206n, 210; memorial to Congress for lands for, 207n; state and county superintendents, 207; restrictions on allocation of funds, 207n; 1875 article more like 1868 than any previous one, 210, 362-363; in campaign for 1875 Constitution, 212, 213-214, 215n, 216; hampered by tax limits (1875-1901), 234; local tax limits, 236-240; Hundley Amendment, 237-238, 247; suffrage, 238, 240, 317, 364; sectionalism in regard to funds for, 238n; local legislation, 242; need for a constitutional convention for (1890's), 250; Mobile schools, 253, 327; the poll tax (1901), 300-301; division of tax funds as paid by race, 302, 318, 322-323, 324, 339; Negro petitions on (1901), 302-304; local taxation for schools, 317, 320-321, 324-325, 348; apportionment act of 1891, 317-318; taxation (1901), 317-326; convention of 1901, 320-327; majority and minority report (1901), 321; merits of 1901 provisions, 321-322; provisions to secure more votes for Constitution (1901), 322; minority report, 323; to prevent another Populist movement, 324n; successes and failures of 1901 convention on, 325-326, 339; Radical Constitution of 1868, 326, 362; in campaign for 1901 Constitution, 344, 348. See Board of Education

Edwards, Jonathan, called a Carpetbagger, 164n

Election laws, provisions of (1875-1901), 218 and n; use of complex laws as educational test, 221; passed to control Negro vote, 223; the Sayre law, 223-225, 230n, 250

Elections, charges of fraud in 1867 and 1868 elections on constitution, 113n, 170n; state and federal elections held together (1868), separately before, 138, 142n; five day election on 1868 Constitution, 169; separate state and federal elections (1875), 182, 195, 199, 209; officials responsible for control of, 218; frauds in, 218-230, 283-284, 363; spread of fraud in, over the state, 230; constitutional convention to abolish frequent elections, 244, 247, 250; federal and state elections combined (1901), 336; quadrennial elections (1901), 336, 339; from annual (1819) to quadrennial (1901), 365

Elective offices, abolished because of Negro suffrage, 222 and n

Ellis, Richard, delegate to convention of 1819, 34

Elmore, John Archie, most able delegate in 1865 convention, 94, 96; debates on slavery (1865), 96; repudiation of state war debt, 100

Ely, George, Carpetbagger in convention of 1867, 119

Employment clause, and the suffrage, 298, 344; disfranchises whites and Negroes, 353-354

Enabling act, places limitations on 1875 convention, 184-185; for constitutional convention of 1899, 249, 251-252. See Alabama Enabling Act

Ewing, Whitley Thomas, charges Constitution of 1868 would destroy credit, 162

Ewing, William C., Scalawag in convention of 1867, 121

Executive article, in original draft (1819), 35; in 1819 Constitution, 38, 39-40; election by people of all executive officials (1868), 140, 149; in 1868 Constitution, 141; in 1875 Constitution, 199-200; lieutenant governor's office abolished (1875), 199, 200; popular election of all executive officials (1875), 199, 210, 362; the 1901 convention, 336-338; secretary of state, state treasurer, and comptroller elected by legislature to 1868, and since by the people, 364-365, 370. See Governor

Exemptions, 1868 article from Michigan Constitution, 147, 149, 150, 166; 1875 convention, 185, 186, 187, 208, 209, 210, 362; issue in campaign for 1875 Constitution, 212, 214-216; constitutional convention question (1898), 253

Fair, Elisha Y., in convention of 1865, 92n

Farmers Alliance, might control a constitutional convention (1890's), 249-250

Federal intervention, fear of (1875), 201

Federal ratio, proposed as basis of representation in legislature (1819), 34, 36; proposed in Mississippi (1817), 36n; Georgia influence, 36; rejected by convention of 1819, 36, 44; abolished by results of Civil War, 102; its abolition worries Northern Radicals, 102n

Fifteenth Amendment, limits state control of suffrage, 132; recognized in bill of rights (1875), 201; disfranchisement of the Negro, 231; the convention of 1901, 270, 271; minority report on suffrage (1901), 281-282; nullified in Alabama long before 1901, 284; "higher law of human nature" concerning, 291-292; controversy over, in convention of 1901, 292

Figures, William Bibb, editor of the Radical Huntsville *Advocate,* 91n, 112, 156; wavers on Constitution of 1868, 168

Fitzpatrick, Benjamin, urges biennial sessions amendment (1844), 54; president of 1865 convention, 92n, 93-94; works against 1868 Constitution, 154; condemns Negro suffrage, 154; policy of not voting (1868), 154n

Five percent fund, mentioned, 44

Force Bill, repealed in 1894, 230

Foreigners, and suffrage (1865), 106-107; unsound on slavery, 107; given equal rights with natives to ecourage immigration (1875), 193, 194, 305-306 and n

Fourteenth Amendment, and suffrage, 132; and office holding, 132n; need for Alabama's readmission to ratify, 174;

reduction of representation under, 232, 275n; convention of 1901, 270; grandfather clause, 294; Crumpacker Bill to reduce representation under, 355n; mentioned, 111n, 124n, 134
Ford, John, convention at his house, 22
Forsyth, John, early opposes whole Radical program, 112; removed as mayor of Mobile, 121n; leader of the Conservatives (1867-1868), 153; speaks against 1868 Constitution, 153; editor of the Conservative Mobile *Register,* 157; one of Conservative delegation to Washington (1868), 170; works for 1875 Constitution, 211; mentioned, 189n
Frauds, in elections, 113n, 170n, 218-230, 283-284, 363
Freedmen's Bureau, Negroes petition convention of 1865 for suffrage through, 106; officials in 1867 convention, 115, 117, 120; educational activities, 143-144; supports Republican party, 162; mentioned, 102, 113n, 137, 157, 158
Freeman, Newman H., and partisan registration boards, 296
Free Negroes, denied suffrage in Mississippi Territory, 14
Free passes, and Constitution of 1875, 209-247, 311-315, 314n; petitions against (1901), 312-315; Montgomery *Advertiser's* crusade against, 313 and n; debate on, in 1901 convention, 314-315; the railroads, 314; compromise on the evil, 314
Free silver issue, and constitutional convention question (1899), 254-255
Frierson, S. G., defaults while state treasurer, 74
Frontier, influence on Constitution of 1819, 46, 361
Fugitive Slave law (1850), enforcement of demanded, 80

Gardner, S. S., Carpetbagger in 1867 convention, 119, 120, 127; proscription of whites, 130
Garrett, William, in convention of 1875, 190-191
Garrison, W. C., Scalawag in 1867 convention, 129; additional proscription of whites, 129-130
Garrow, Samuel, mayor of Mobile and delegate to convention of 1819, 32
General Order No. 49, and newspapers (1867), 156
George, J. Z., dominates Mississippi convention of 1890, 266n
Georgia, articles of cession, 20, 44; provides for popular election of judges (1810), 64; poll tax, 299; state ownership of railroads, 328; disfranchising amendment (1908), 340n; Alabama had accumulative poll tax, 353
"Georgia party," in early Alabama politics, 24; usury law, 47n
Georgia Railroad Commission, model for Alabama reformers, 310, 312, 314, 315
Gerrymandering, of districts, 221-222
Giles, J. W., carries Negro disfranchisement to U. S. Supreme Court, 356-357
Girls Industrial Institute, and convention of 1901, 327
Good character clause, and convention of 1901, 288, 290, 294-295, 296, 344, 345; Boswell Amendment (1946), 298n
Goodwyn, A. T., and contested election case (1894), 218n, 219n; denounces Sayre election law, 224
Gordon, John Brown, speaks in Alabama for 1875 convention, 177
Governor, in Mississippi Territory, 5; absolute veto, 7; his power weakened as contained in original draft (1819), 39; succession to, 40; post-Revolutionary fear of, 40, 360; elected by people (1819), 70; item veto (1875), 199, 200; governor's tenure and succession (1875), 199-200; two term tradition for governor (1875-1901), 244, 255; increased powers of, since 1819, 334, 339; ineligible to become United States Senator, 337; control over sheriffs in lynching cases, 337-338; increasing powers of (1819-1901), 361, 367-368, 370; governor elected by people from 1819, 364; appointive power increased to combat Negro suffrage, 221-222, 365; power to appoint major officials, 367; restrictions on (1901), 368, could not succeed himself (1901), 368, in Alabama in 19th century, 367-368. See Executive article
Graham, John B., and education, 239n, 266, 320-321; the poll tax, 301; speaks for 1901 Constitution, 349
Graham, William, State Treasurer, 74n
Grandfather clause, in Louisiana, 231, 272, 345; suffrage plans (1901), 275; the Alabama, 276-277; favored in suffrage committee, 280; report of suffrage committee, 281; minority report on the suffrage, 281-282; debate on in convention, 285-295; New England origins, 285n; exclusion of Negroes, 287; constitutionality, 287-288; advan-

tages of the "fighting" grandfather clause over the "voting," 288; prime purpose, 288; appeal to sentiment, 288-289; lack of education after the war, 289; inherited capacity of white race to govern, 289-290; insult to white race, 289, 294; opponents of, 292; Confederate soldiers, 293; defense in United States Senate, 293n; prophesy of its early death, 294; popularity of, 294-295; opposed by United States Senators, 295; separate popular vote on, 306; campaign for ratification (1901), 345; a necessity, 345n; declared unconstitutional in Guinn case (1915), 357n

Grange, mentioned, 204n

Grant, General U. S., asks extension of Alabama election period (1868), 169n

Graves, Bibb, opposes Constitution of 1901, 341, 343, 349-350; fears loss of Black Belt representation (1901), 343n

Graves, George W., Scalawag in convention of 1867, 121-122, 128; opposes proscription (1867), 128; intermarriage of races, 139n; Scalawag opposition to 1868 Constitution, 151n

Greathouse, Early, Scalawag in convention of 1867, 122

Greely, Horace, counsels moderation in 1867 convention, 131n

Greenback party, in Alabama, 237 and n

Greensboro, contends for capital (1826), 55

Greer, Charles H., letter of John T. Morgan to, 232; "Black Belt art," 284; Black Belt fear of the white counties, 307-308

Gregory, Ovid, a Negro in 1867 convention, 115, 117; segregation, 135n; colored orphans asylum (1867), 139; intermarriage of races, 139

Griffin, Albert, editor of the Radical Mobile *Nationalist,* 112, 127, 156; extreme Carpetbagger in 1867 convention, 116, 119, 125n, 132, 139; chairman of the committee on the elective franchise, 124; proscription of whites, 126n; condemns Alabama's antebellum constitution, 136; the legislature, 138; and intermarriage of races, 140; election of judges, 142n; favors mixed schools, 145; free public schools, 165; writes address to white people (1868), 167n; charges of fraud in submission vote (1868), 169

Griffin, Frances, and woman suffrage, 278 and n

Hamilton, Peter, chairman of legislative committee for 1875 convention, 177

Hampton, Wade, defends Negro suffrage, 217n; paternalism toward the Negro, 304, 324

Handley, William A., and committee on taxation (1901), 266; conservative industrialist, 267; committee on suffrage (1901), 267; wants cheaper votes, 284; corporate interests of, 311; more severe tax limit, 318-319; influence on financial matters (1901), 318-319; state aid, 328; speaks for 1901 Constitution, 349; his county goes for constitution, 351

Hardy, John, and biographical sketches of delegates (1867), 110n; editor of a Radical *Daily State Sentinel,* 112, 156; influence on convention of 1867, 140n; social equality, 140n; advocates appointment of judges by governor, 142n; interests in education, 143, 165n; Board of Education, 144n; article on industrial resources, 148; summary of reasons to vote for Constitution of 1868, 168; election of 1868 on constitution, 169n; after constitution defeated, predicts readmission, 170; on Thaddeus Stevens, 173n; mentioned, 166n

Harrison, George Paul, and two year term for governor (1875), 199; repudiation of railroad debt (1875), 204; Constitution of 1875, 217n; contested election case, 219n; delegate to proposed 1899 convention, 255n; railroad lawyer in 1901 convention, 266, 311; the suffrage, 267, 311, 341n; signs minority report on suffrage, 281; opponent of grandfather clause, 295n; committee on corporations, 312, 314; opposes an effective railroad commission, 315; severe tax limit, 319; speaks for 1901 Constitution, 349; white primary and 1901 Constitution, 357n

Haughey, Thomas, Carpetbagger in 1867 convention, 119, 127; additional proscription of whites, 129

Hayden, General Julius, replaces General Wagner Swayne, 169n

Heflin, J. Thomas, and manipulation of Negro vote, 261n; in 1901 convention, 264; opposes publication of debates, 270; opposes woman suffrage, 279; wants suffrage debated in caucus, 283n; grandfather clause, 289; bitter opponent of Negro and champion of poor whites, 305, 324; speaks for the 1901 Constitution, 349

Heflin, John T., speaks against 1868 Constitution, 153n
Henderson, Charles, in 1901 convention, 264
Herbert, Hilary A., Carpetbaggers in 1867 convention, 118; suffrage committee (1901), 275; return of two party system, 346
Herndon, Thomas Hord, and convention of 1875, 189n, 191; four year term for governor (1875), 199; Constitution of 1875, 214
Hitchcock, Henry, delegate to convention of 1819, 32, 34; the enabling act, 43; mentioned, 37
Hodgson, Joseph, opposes whole Radical program (1867), 112n; speaks against 1868 Constitution, 153; editor of the Conservative Montgomery *Mail,* 157; speaks for 1875 convention, 187n; South Alabama (1875), 189
Holmes, David, governor of the Mississippi Territory, 5; prorogues legislature, 6
Holmes, Oliver Wendell, and decision on 1901 Constitution, 356
Holtzclaw, William H. T., petitions the convention (1901), 303
Hopkins, Arthur F., delegate to convention of 1819, 34; favors executive veto (1819), 39; on election and succession of sheriff, 39; mentioned, 37
Horton, Gustavus, Scalawag in 1867 convention, 121, 122; education, 143
Houghton, Mitchell B., and corruption in the legislature, 227n
Houston, George Smith, wins election of 1874, 175, 346; wants "home rule" constitution, 175, 177; speaks against odius registration oath of 1868, 183n; fears total repudiation of debt by 1875 convention, 181, 203n, 204, 210n; pledge to enforce limitations on 1875 convention, 185; on debt commission (1875), 203n; speaks for 1875 Constitution, 211
Howard, James Hart, Conservative in 1867 convention, 114n; Negro suffrage, 126
Hughes, Beverly, delegate to convention of 1819, 34; favors executive veto, 39; election of sheriffs, 39
Hundley, Oscar R., and local taxation for education, 237-238
Hunter, Narsworthy, agent of Sargent's opposition, 5; first territorial delegate, 12
Huntsville, made temporary capital and convention site (1819), 26, 37, 55; session of the Supreme Court, 89; mentioned, 153
Huntsville bank, and usury law, 47n
Huntsville *Democrat,* the voice of "the people," 49n
Huntsville *Southern Advocate,* voice of the aristocracy and later Whig party, 49n
Hurst, James F., in 1867 convention, 114n
Hutchins, Anthony, Republican opponent of Sargent, 4-5; elected to the legislature, 5

Immigration, and convention of 1865, 106-107; attempts to encourage (1867), 124, 125, 148-149; commissioner of (1867), 148, 149; 1868 Constitution, 168; convention of 1875, 183, 194, 203, 306n; grandfather clause, 282; severe tax limit, 319
Impeachment article, in 1875 Constitution, 195, 198-199, 209; campaign for 1875 Constitution, 212, 215
Imperialism, and disfranchisement of the Negro, 231, 290-291, 363
Imprisonment for debt, and Constitution of 1819, 35; 1868 Constitution, 134, 150, 166; 1875 convention, 186, 187, 209; constitutional convention question, 253
Indian Territory, in east central Alabama, 56
Industrialists, and presidency of 1901 convention, 265; bitter attitude toward Negro, 305; policy of non-state regulation of industry (1901), 308; select electorate (1901), 308; Black Belt control of convention of 1901, 310, 312, 315, 323, 329; severe tax limit, 319; 1901 Constitution, 341, 358; vote on 1901 Constitution, 351; alliance with Black Belt since 1901, 358
Industrial resources, commissioner of, 148, 149; called a useless office, 180; office abolished (1875), 209, 210
Industry, and 1868 Constitution, 168, 362; 1875 convention, 175, 183, 188, 190n; opposes debt repudiation by convention (1875), 204; great growth of (1875-1901), 233; anti-industrial bias of 1875 convention, 233; demand for state aid for, 236
Insane hospital, mentioned, 160 and n
Interest, rate of (1818-1819), 31n, 47 and n, 48, 53; rate of (1901), 314, 315
Intermarriage of the races, no provision against, in 1868 Constitution, 139-140, 152, 362; campaign for ratification

(1868), 158, 160; 1875 convention, 201
Internal improvements, and Alabama Enabling Act, 28-29; proposals to prohibit state aid to, 71, 72; restrictions on debt (1861), 87; state aid to, advocated, 93; 1868 Constitution, 137 and n, 147; prohibition on state, county, or city aid to internal improvements companies or corporations (1875), 180-181, 190, 195, 196-197, 202-203, 208-209, 216, 234, 236, 361; state aid to, forbidden (1875), 234, 236, 361; hampered by tax limits (1875-1901), 233-234, 236; forbidden by the state (1901), 327-328; road tax amendment, 236, 247; convicts, 245n
Ironclad oath, in Reconstruction period, 90n; required of registrars, 111

Jackson, Andrew, mentioned, 112n, 147n
Jacksonian democracy, advocated election of all officials by people, 64; amendments (1830-1850), 361
Jacobins, Republicans denounced as, 187, 211
Jeffersonian Democrats, and contested election cases, 219; or Populists, 224. See Populists
Jeffersonian liberalism, and Constitution of 1819, 30-31
Jefferson, Thomas, appoints Claiborne governor, 5; the council, 11; and the suffrage, 288, 292; quadrennial sessions, 335
Jefferson County, and 1901 Constitution, 261, 342
Jelks, William D., and tax limit, 320; sets ratification day, 341, 349; for 1901 Constitution, 349
Jemison, Robert, leader of cooperationists, 79
Johnson, A. N., and Negro meeting against 1901 Constitution, 343
Johnson, Andrew, and reconstruction in Alabama, 90, 94, 110, 125, 171; Negro suffrage, 97n; Alabama policy of not voting (1868), 154n; amnesty, 159; trial of, holds up readmission, 170, 171n, 173; vetoes readmission bill, 174
Johnson, Richard M., delegate (1867), 113n
Johnston, Joseph F., and a new constitution, 235-236, 249, 250, 252; education and suffrage, 240; local legislation, 243; and primary elections, 245n; popular election of all officials, 246-247; reverses stand on constitutional convention, 251; Populist inclinations of, 251; views on the suffrage, 252; free silver issue, 254; repeals convention bill, 255; Senate race (1900), 255n, 258; ineligibility of governor for United States Senator, 337; opposition to 1901 Constitution, 342, 349-350; the Negro, 343; denounces registration boards, 345; the poll tax, 347
Jones, Obidah, first judge of Madison County, 9n
Jones, Richard C., and suffrage (1901), 267; supports Negro education, 324
Jones, Thomas Goode, and elections of 1890 and 1892, 223, 227n, 228-229; constitutional convention, 249, 255n, 256-257, 260; influence in 1901 convention, 266; chairman of executive committee (1901), 266; suffrage, 274n, 283, 311, 341n; grandfather clause, 293, 295n, 345; defends the Negro, 304; railroad lobbyists, 313n; child labor, 316n; against more severe tax limit, 319-320; supports Negro education, 323, 324; appointed federal judge, 344
Judges, elected by legislature (1819), 40; popular election of, 41, 64-67, 69, 72, 141-142, 149-150, 190, 200, 210, 362, 366; issue of life tenure (1819), 41; limited tenure amendments (1828 and 1829), 47, 49-50, 50-51; trial of the judges, 48; opposition to popular election of (1861), 88; separate election day for, until 1868, 102, 142; appointment of, advocated (1875-1901), 246
Judiciary, in Mississippi Territory, 8-9, 10n; 1819 convention, 40-41, 40-45; 1819 article conservative, 47; usury law, 47-48; to enlarge judicial circuits, 70; divorce, 70; North Alabama, 70, 72; proposal to abolish chancery courts (1850's), 72; interim appointment of state treasurer, 74; 1868 Constitution, 141-142; probate courts to enforce contracts (1868), 142; reforms demanded in (1875), 183; 1875 convention, 200-201; effect of dishonest suffrage methods on (1875-1901), 226-227; and needed reforms (1875-1901), 246-247, 250; popular election of solicitors, 247; reapportionment a legislative matter, 308; convention of 1901, 338; popular election of judicial officials in the nineteenth century, 365, 370
Justice of peace, amendment on (1843), 69; minor cases, 69; move to increase power of (1861), 88; powers of, in-

creased because of freedmen (1865), 103, 105-106

Keffer, John C., Carpetbagger in 1867 convention, 119, 120n, 123, 124, 127; segregation, 135; fraud in submission vote, 169; "Pig Iron" Kelley, 172n
Kelley, William, leads "popular party," 48; prosecutes the judges, 48
Kelley, William D. (Pig Iron), and readmission of Alabama, 172
Kelley riot, in Mobile, 121n
Kennemer, Samuel F., Scalawag in 1867 convention, 122n
Key, V. O., and vote on 1901 Constitution, 351n; decline in number of voters, 355-356
King, William Rufus, delegate to convention of 1819, 32, 33; described by John Campbell, 32, 33n, 34; opposes record in committee of whole (1819), 36n; election of sheriffs, 39; favors divorce by legislature, 70n; mentioned, 37
Knox, John B., president of 1901 convention, 264-266; "stacks" suffrage committee (1901), 267; opening address on suffrage, 268; select electorate objective (1901), 269, 285n; addresses suffrage committee, 280; constitutionality of grandfather clause, 287; cites Cullom report, 290; discredits Morgan's opposition to grandfather clause, 293n; representation, 307n; railroad lawyer, 311; appointment of corporation lawyers to committees (1901), 311; speech on suffrage, 311n; education and the suffrage, 317; campaign for 1901 Constitution, 343n, 349; white supremacy by law, 346n; his county goes for constitution, 351
Kolb, Reuben F., and election of 1892, 223, 227n, 228-229; prefers name Jeffersonian Democrats to Populists, 224n; election of 1894, 226, 229, 237; "inaugural address," 229; wants white primary (1892), 244-245; constitutional convention (1890's), 250; sheriffs of Black Belt against, 248n; supports 1901 Constitution, 348
Ku Klux Klan, and the Radical regime, 219

Labor, and a new constitution for education, 240; Benjamin H. Craig, 278n; 1901 Constitution, 348
Lamar, L. Q. C., defends Negro suffrage, 217n
Lands, in Mississippi Territory, 20; speculation in Alabama (1819), 26, 42; for a capital and university (1819), 29, 44; Alabama Enabling Act, 29, 43-44; five-year tax exemption (1847), 81; ordinance of 1819 concerning repealed (1861), 81; Alabama continues grants to railroads (1861), 82; public lands not ceded to Confederate Government, 82; for agricultural college, 145; memorial on (1875), 207n
Langdon, Charles Carter, and slavery (1865), 96; convention of 1875, 191, 194; repudiation of debt (1875), 204n; Mobile school system, 207
Latham, L. S., Negro delegate (1867), votes against 1868 Constitution, 149
Lattimore, William, Mississippi territorial delegate, 9, 12, 23
Lawler, Levi W., on debt commission (1875), 181, 203n; prohibition on state aid, 196n; Democratic responsibility for Reconstruction debt, 196n
Lawton, Henry Ware, mentioned, 231
Lee, Thomas, Negro in 1867 convention, 124; opposes proscription of whites, 129
Legislature, in Mississippi Territory, 10-11; 1819 Constitution, 35-38; biennial sessions, 51-55; growing distrust of, before 1861, 54, 68, 73; proposed amendments to limit before 1861, 68-69, 70, 71, 72, 73; annual sessions amendment (1859), 75; making of debt (1865), 103; and local legislation, 103, 104; changes on (1861) readopted in 1865, 103; appointment of its own members to office, 104; 30-day limit on sessions (1865), 104; 1875 Constitution, 195-199; innumerable restrictions, 195, 197-198; special sessions, 195, 197, 366; size of, 201-202; effect of dishonest suffrage methods on (1875-1901), 226-227; controlled by the railroads and conservatives, 312, 334-335; decline in power and prestige since 1819, 333-336, 360, 361, 370; restrictions on (1901), 334-335, 339; Black Belt control of, 358; growing distrust of, restrictions in nineteenth century, 361, 366-367; elected many officials until 1868, 364-365; growing length of article on, 366
Lewis, David Peter, works for 1875 Constitution, 212
Lieutenant governor, office created (1868), 140-141, 149; abolished as

useless (1875), 161, 180, 199, 200, 210; office recreated (1901), 337 and n
"Lily white" Republicans, support Negro disfranchisement, 261, 304, 349
Lincoln, Abraham, election of, 76; mentioned, 112n
Liner, J. A., and education, 239n
Lindsay, Robert Burns, and state aid to railroads, 196; removal of suffrage disabilities, 201n
Lipscomb, Chief Justice A. S., charges against, 48n
Local legislation, evils of, under 1819 Constitution, 53, 54n, 69, 71-72; forbidden (1861), 85; and Constitution of 1865, 103; Constitution of 1868, 137; Constitution of 1875, 182, 190, 195, 209, 211, 240-244, 331-332, 361; Alabama Supreme Court, 240; increase in volume of, 240-241; amendment of 1888, 241; analysis of local bills (1898-1899), 241-242; education, 242; "legislative courtesy," 242-243; plans to curb, 243, 247; need for new constitution, 243-244, 250; convention of 1901, 331-333, 344, 367
Lodge Force Bill, defeated (1890), 230
Lommax, Tennent, and 1901 convention, 264-265; on Wall Street and disfranchisement, 290
Long, John Lee, opposes 1901 Constitution, 343, 349-350
Long, Thomas L., and educational and property qualifications for voting, 297; employment clause for the suffrage, 298; opposes poll tax, 301; bitter attitude toward the Negro, 305
Lotteries, forbidden (1875), 195
Louisiana, and the suffrage (1898), 265, 272, 274; Louisiana plan favored in suffrage committee, 280; "voting grandfather" clause, 277 and n, 295 and n, 231; poll tax, 299n; constitution proclaimed and illiterate whites disfranchised, 254; school district tax, 324
Louisville and Nashville Railroad, mentioned, 204n, 266, 311n
Lowe, Robert J., and 1901 convention, 265n, 283; opposes grandfather clause, 292, 295n; opposes registration boards, 296-297; party issue, 341; vote on suffrage article, 341n
Lowe, William Manning, elected by Greenback party, 277n, 292
Loyal League, and Negroes (1867), 113n; Republican party, 162; election on constitution (1868), 170n
Luther, Martin, called a Carpetbagger, 164n
Lynching, and convention of 1901, 278n, 337-338
Lyon, Francis Strother, and convention of 1875, 189n, 191; Reconstruction debt, 194; address to people (1875), 211

McClellan, Robert Anderson, and impeachments, 198-199
McCorvey, T. C., and education, 239n
McGoffin, James, delegate to convention of 1819, 32
McGuire, William, judge in the Mississippi Territory, 4, 8; resigns, 9
McKee, Robert, opposes 1868 Constitution 153n; editor of the conservative Selma *Messenger,* 157; doubts integrity of Congress (1868), 171; wants debt repudiation (1875), 204n
McKinley, William B., his Southern policy, 268n; Negro disfranchisement, 290-291, 344
McKleroy, John Martin, and Board of Education, 179; supports 1868 school system (1875), 206n
McVay, Hugh, delegate to convention of 1819, 32; on election of sheriffs, 39
Madison, James, and notes on U. S. Constitution, 270n; quadrennial sessions, 335
Madison County, second county in Alabama, 9; division of the Territory, 19
Manning, J. C., threatens Black Belt, 230; disfranchisement of whites (1901), 353n
Marion, wants capital (1845), 62
Mathews, George, nomination rescinded, 4n
Mead, Lemuel, delegate to convention of 1819, 31n
Meade, General George, reports defeat of 1868 Constitution, 169, 171
Meadors, John Calhoun, Scalawag in 1867 convention, 122
Military rule, preferable to readmission (1868), 158n
Militia, largely of Negroes, 146, 160-161; convention of 1867, 162n
Militia article (1868), from midwestern constitutions, 146, 149
Miller, Charles A., Carpetbagger in 1867 convention, 119, 120
Miller, J. N., and grandfather clause, 295
Miller, Lawrence D., and education, 239n
Minor, Henry, delegate to convention of 1819, 31n

Mississippi, and effect of its 1832 Constitution in Alabama, 54, 64, 67; 1865 convention followed in Alabama, 94
Mississippi Constitution of 1890, and poll tax, 223-224, 285-286, 299; understanding clause, 232, 287-288; Alabama, 249n, 257n, 265, 271-273, 274; proclaimed and illiterate whites disfranchised, 253-254; incentive from white counties, 269n; Alabama suffrage committee, 280; convict lease system, 245, 316
Mississippi Territory, creation and expansion of, 3-4; slavery, 3n; second stage of development, 5; executive in, 5-7; executive vs. legislature in, 5-6; secretary of, 7-8; population in 1798, 8; judiciary in, 8-10; judges act with governor to adopt laws, 8, 9; legislature in, 10-12; petitions from, 12-15, 16-18; division of, 15, 16-17; sectionalism in, 16-19; capitals of, 19; Georgia machine favors division of, 19; bills for division, 20; clouded land titles in, 20; fear of federal courts in, 20-21; Georgia agrees to division, 21; House against division and Senate in favor, 21, 23; east and west reverse positions, 22-23; divided, 23
Mobile, wants capital (1845), 58, 62; a state war debt (1865), 101; convention of 1875, 188, 207, 238n, 253; underrepresented in legislature, 202; tax limits (1875), 234; certain funds for education, 207, 238n, 253; independent school system (1901), 327; mentioned, 153, 182
Mobile harbor, seized from Spanish, 18
Monroe, James, appoints governor of Alabama Territory, 24; signs Alabama admission bill, 45
Montevallo, contends for capital (1826), 55
Montgomery, secures capital, 58, 62-63; prohibition against removal of capital, 89, 195, 197; before and during war, 115; Radical dislike for (1867), 127n; Radical influences around (1875), 197
Moore, Andrew Barry, calls convention of 1861, 76; policy of not voting (1868), 154n
Moore, Gabriel, delegate to convention of 1819, 31n, 32
Moren, Edward Hawthorne, and convention of 1875, 189n, 191
Morgan, Albion, Labot, and imprisonment for debt, 134
Morgan, J. P., mentioned, 311n
Morgan, John Tyler, leader of secessionists, 79; on committee to write 1861 Constitution, 86; opposed to popular election of judges (1861), 88; speaks against 1868 Constitution, 153; 1875 convention, 177; election contested, 220; methods used to control Negro suffrage, 226; Negro disfranchisement, 231, 232; convention issue in senate race (1900), 255, 258-259; opposes repeal of convention bill (1899), 256-257; "white supremacy" issue (1901), 260; 1901 convention campaign, 260; advises secrecy in 1901 convention, 270n; suffrage plan, 274n; suffrage committee (1901), 275; woman suffrage, 278; grandfather clause, 293, 345; ratification of 1901 Constitution, 349; mentioned, 337, 342n
Morrill Education Act, and Radicals, 145
Moulton Leaguers, in Alabama, 122n
Mudd, William S., and 1865 convention, 94, 95; 1875 convention, 189n, 191
Municipalities, convention of 1901 turns down progressive report on, 330-331, 338-339. See cities
Murphee, Joel R., and free pass evil, 314
Murphy, Edgar Gardner, and select electorate of 1901, 269n; necessity for temporary suffrage plan, 286n; defends the Negro, 304-305; child labor, 316n; disfranchisement of whites (1901), 353n
Murphy, John, and convention of 1819, 32, 34; against executive veto (1819), 39

Negro, and civil rights (1865), 97, 103; intermarriage (1865), 105; boards of registration (1867), 111; election (1867), 113, 114; in 1867 convention, 115, 116-117, 118n, 123, 132; civil and political equality, 125; forced to vote for majority report on suffrage, 129; against proscription of whites, 129; given state citizenship, 134, 150, 163; segregation, 134-136, 145; civil rights, 134-136; poor house and orphan's asylum (1867), 137, 139; education for office, 138; intermarriage of races (1867), 139-140; contracts for labor (1868), 142, 147; militia, 146, 160-161; churches, 148n; bigamy, 148n; Negro delegate, opposes 1868 Constitution, 149; in campaign for ratification (1868), 163-164, 167; 1875 Constitution, 188, 212; officeholding, 217, 364; lacked capacity for government, 259n, 268, 289; suffrage debate (1901), 283; Republican party not interested in his rights (1901), 290-291; bears the burden of citizenship, 294, 343; grandfather clause, 294; garnishment of wages, 301n; taxation, 302, 318; petitions to convention of 1901, 302-304; education, 302-304, 318; paternalistic defenders in convention of 1901, 304-305; bitter opponents, 305; division of school funds as paid by race, 322-324; campaign for ratification of 1901 Constitution, 343; charges 1901 Constitution be "counted in," 347; and 1901 Constitution adopted with his vote, 347, 350-352, 358; his newspaper on 1901 Constitution, 348-349; carries 1901 Constitution to Supreme Court, 356-357; sectionalism in Alabama's constitutions, 362

Negro disfranchisement, motives behind, 229-230, 232; national conditions, 230-232; imperialism, 231; states that acted before 1901, 231; Negro movement North, 231; movement for (1878-1901), 249, 268, 271-273; opposition of William C. Oates, 264; motive for 1901 convention, 268; not a sectional issue, 290-291; northern capitalists, 290-291; condoned by northern editorials, 291; emigration, 303, 343; and labor conditions, 303; in campaign for ratification (1901), 346; under 1901 Constitution, 352, 354; reduction of representation under Fourteenth Amendment, 355n; tested in United States Supreme Court, 356-357; white primary, 357n

Negro suffrage, and free Negro, 14; advocated by northern Radicals (1865), 95; petition for (1865), 106; fears of, in 1865 convention, 104, 106n; absence of (1865), favored North Alabama, 109; Reconstruction Acts, 124, 362; oath to support forever (1868), 125-126, 152, 158, 159, 167; required as price of readmission (1868), 126-127; Scalawags from white counties (1867), 126-127, 131; defended by Carraway, 130; proposed educational qualifications (1867), 130-131; Republican party, 136, 158, 159, 186, 261; popular election of judges, 141-142, 200; northern states, 158; in campaign for ratification (1868), 158, 162n, 163; places government in hands of non-property holders, 161; fraud (1868), 170n; favors Black Belt, 175 and n, 217, 218n; why not abolished (1875), 217, 363; fraud in elections (1875-1901), 218-221; methods used to control, 219-220, 221-225, 222, 223, 365; Populist revolt, 227-230; white primary suggested as answer to, 245; Democratic platform (1901), 259n; popular vote on 1901 Constitution, 261-262; petty crimes clauses, 275; woman suffrage an antidote to, 278; Black Belt manipulation of, 283-285, 296-297; majority of literate Negroes, 301, 348n; Negro petitions on (1901), 302-304; loss of, by Black Belt, 306-308; soldiers clause, 356n; menace to democracy, 365; restrictions on legislature, 361. See Negro disfranchisement and Suffrage

Newspapers, and limited tenure for judges, 49-50; biennial sessions (1830-1845), 52-54; removal of capital amendment, 58-63; secession, 77; convention of 1865, 91; attitude toward registration (1867), 111-112; Radical newspapers (1867), 112, 153, 156; rebel editors, 130; public printing (1867-1868), 156; campaign vs. 1868 Constitution, 156-158; Constitution of 1875, 176, 179, 213-214; convention bill repeal (1899), 257-258; disfranchisement of the Negro, 273-274; no white disfranchisement pledge, 279-280; grandfather clause, 295; ratification campaign (1901), 348-349

Norris, Benjamin, Carpetbagger in convention of 1867, 119, 120, 124, 166n; charges fraud, 169

North Alabama, dominates convention of 1819, 33, 37; representation, 37, 70-71, 104-108, 136, 150, 175, 201-202, 209, 252-253, 306-309, 347-348, 368-369; capital, 51; Supreme Court, 70, 89; secession, 76n, 80, 83-84, 89, 93, 369; submission of constitutions, 83-84, 89, 108, 340; dominates convention of 1865, 108-109; the Johnson government (1865), 108-109, 368; drives Radicals from power (1874), 175; wins presidency of 1875 convention, 189; condemns Black Belt for use of Negro vote, 217-218; wants state aid to industry, 236; convention of 1901, 251, 254, 261, 265; poor whites oppose a convention, 254; grandfather clause, 294-295; partisan registration boards, 296-297; educational and property qualifications for voting, 297-298; poll tax, 299-302; education, 300, 317-318, 322, 323-324; campaign for ratification (1901), 341-342, 346; votes against 1901 Constitution, 351, 363

North Carolina, and the suffrage, 272, 274, 295, 340n, 345

Northern capitalists, and Negro disfranchisement, 290-291
Northwest Ordinance, a constitution for the territories, 3-4, 7n, 24, 29; slavery, 3; dissolution of assembly under, 6; petitions for more democracy under, 17-18; education, 41; mentioned, 44, 45
Notaries public, given justice of peace powers (1868), 142

Oates, William Calvin, and convention of 1875, 189, 191, 194; the judiciary (1875), 200-201; repudiation of railroad debt (1875), 204; suffrage (1875), 217n; Sayre election law, 225; election of 1894, 226; methods used to control Negro suffrage, 226; need for new constitution, 235-236, 244, 246, 250, 255n, 256-257, 260; local legislation, 242, 243, 333; opposes disfranchisement of whole Negro race, 264; 1901 convention, 264-266; suffrage (1901), 267, 274n, 275n, 278n, 281, 311; disfranchisement of whites, 293; grandfather clause, 293, 295n, 306; defends the Negro, 304; tax limits, 319-320; supports Negro education, 323; votes against suffrage article, 341n; 1875 and 1901 Constitutions, 349
Oath, see Registration
Officeholding, and residence requirements, 70; qualifications (1868), 134, 136, 138; qualifications (1875), 194-195; no property or religious qualifications for (1819-1901), 364
Olmstead Resolution, and Southern representation, 232
O'Neal, Edward Asbury, and convention of 1875, 190n, 191; education (1875), 206, 207n; evils of local legislation, 242
O'Neal, Emmet, in 1901 convention, 264; local legislation, 266, 331; suffrage (1901), 267, 278n; Negro disfranchisement, 287, 290; capacity of whites to govern, 289; poll tax, 301; defends Black Belt, 308; tax limits, 320; State Board of Education, 326; constitutional convention (1915), 328n; decline of the legislature, 334-335; lynching, 338n; readoption of 1875 Constitution in 1901, 339
Ordinances, of organic nature (1861), 80, 81; of a legislative nature (1861), 81; of legislative nature (1867), 148n; of legislative nature forbidden (1875), 184-185, 193n, 209
Owens, A. F., petitions the convention (1901), 303

Page, Thomas Nelson, and disfranchisement of whites (1901), 353n
Palmer, John McAuley, mentioned, 254
Panic of 1819, and banking, 42, 47n
Pardons, and the governor (1868), 141, 150; board of, 199, 337, 368
Parsons, Lewis E., provisional governor, 90; calls constitutional convention (1865), 90-91; amnesty oath, 93; Negro's civil rights, 97; against 1868 Constitution, 153; agent of Conservatives in Washington, 153n, 170; policy of not voting (1868), 154n; goes over to Republican party, 177-178; for 1875 Constitution, 212
Patton, Robert M., removes Forsyth, 121n; state aid to railroads, 196n
Peabody fund, mentioned, 239n
Peck, Elisha Wolsey, Scalawag and president of 1867 convention, 121, 122, 123; suffrage, 128
Penal reform, see convict leasing
Personal liberty laws, repeal of, demanded, 80; election of judges, 88
Peters, Thomas Monatt, Scalawag in convention of 1867, 121, 122; removal of capital, 127n
Pettus, Edmund W., opposes convention bill repeal (1899), 256-257; and Constitution of 1901, 260, 349; suffrage committee (1901), 275; grandfather clause, 293, 345, 346; white supremacy, 346n
Pettus, Erle, and Negro education, 322
Pettus, Frank L., wants the Mississippi system, 249n
Phillips, George, in convention of 1819, 34; election of clerks, 40
Phillips, John Herbert, and new constitution for education, 238-239, 324, 348
Petitions, for statehood for Alabama, 26; from Mississippi Territory, 12-15, 16-18; for continued military rule (1868), 173n; lands for education, 207n
Pickens, Israel, in convention of 1819, 32, 33, 34; representation, 37; sheriff, 39; divorce, 70n
Pickens, James, in convention of 1819, 33n
Pickering, Timothy, secretary of state, 8
Pitts, Phillip H., chairman of committee on representation (1901), 266, 307n
Plowman, T. S., contested election case, 219n

Poindexter, George, territorial delegate, 6, 21, 27

Poll tax, for schools (1868), 144, 160n, 166; for schools (1875), 206; Sayre election law, 223-224; forbidden for suffrage (1875-1901), 223-224, 247; in disfranchising Southern states, 272-273, 276; 1901 convention, 275, 281, 298-302, 344, 347; education, 300-301, 321n; necessary for white supremacy in Black Belt, 301-302; percentage of voters, 354n; white disfranchiser, 285-286, 299, 353-355, 358, 364; the Negro, 299, 301-302, 354; amendment of 1953, 300n; history of, in Alabama, 299-300, 364

Poor whites, and social equality, 140n; fear disfranchisement, 224, 229, 249-251, 253-254, 255n, 257n; Democratic pledge to, 255n, 271, 279-280, 364; oppose convention of 1901, 260; disfranchisement a motive for 1901 convention, 244, 268-269, 285, 299; petty crimes suffrage clauses, 275; disfranchisement of (1901), 276, 285, 345, 358-359, 363; debate on suffrage, 283; grandfather clause, 294-295; poll tax, 300-301; the Negro, 318; local taxation for schools, 324; used to effect their own disfranchisement, 343, 358; campaign for ratification (1901), 344, 346; vote on 1901 Constitution, 351

Pope, General John, and registration (1867), 110; elections of 1867 and 1868, 113, 169n; calls convention (1867), 114; advises moderation (1867), 131; submission (1868), 151; and newspapers, 156; removed, 169

Popular election, of all executive and judicial officials, 199, 210, 361, 364-365, 370

"Popular party," against "Royal party," 48

Popular vote, on limited tenure for judges, 50-51; biennial sessions (1830 and 1845), 54-55, 60-61; convention call (1839), 57; removal of capital, 60; election of judges (1849), 67; census amendment (1849), 67; constitutional convention (1856), 74; secession convention, 77; calling a convention (1867), 113; 1868 Constitution, 169; 1875 convention call, 187-188; 1875 Constitution, 216; 1901 convention call, 261; 1901 Constitution, 340, 350-352. See submission

Populists, and contested election cases, 218n, 219-220; print dummy ballots, 220; Sayre election law, 223-225; oppose poll tax, 224; against machine politics, 228; set stage for Negro disfranchisement, 227-230, 232, 363; Democrats would disfranchise, 244, 343; might control a constitutional convention (1890's), 249-250; oppose 1901 convention, 250-251, 254, 257, 260, 345; 1901 convention, 263, 269, 308; woman suffrage, 279; defeated by Black Belt Negro votes, 284, 306; defend Fifteenth Amendment, 292; oppose majority plan on the suffrage, 295-296; partisan registration boards, 296-297; the poll tax, 299; defend the Negro, 304; education to prevent, 324n; campaign for ratification (1901), 341, 349, 350, 358; areas supporting and Constitution of 1901, 351, 363; decline in number of voters, 355-356; 1901 Constitution to prevent, 358; revolt against Bourbons, 362; Black Belt dominance in Democratic party, 368. See Jeffersonian Democrats

Porter, Benjamin, and imprisonment for debt, 166n; homestead exemptions, 166n; women's rights, 166n

Powers, J. K., and education, 239n

Pratt, Daniel, against 1868 Constitution, 153-154

Price, Thomas H., attacks Board of Education, 180; tax limits, 181

Primary, see direct primary and white primary

Pritchard Resolution, against North Carolina's grandfather clause, 293n

Pugh, James Lawrence, in convention of 1875, 191; anti-secession clause (1875), 194

Quadrennial sessions, of the legislature, 335-336, 339, 344; conservative victory, 365

Radicals, and the new order, 109, 362; refuse to seat Representatives (1865), 110; biographical sketches of, 116n; "a model Alabama Radical," 121n; feared break up of Republican party, 135-136, 139; state aid, 137n; Conservative attack on, 157-158; campaign for 1868 Constitution, 162-163, 165-168; charges of fraud (1868), 169-170; apply act retroactively to Alabama, 172-174; suggest provisional government (1868), 173; two-thirds provision on state aid to corporations, 196n, 366; use of Negro vote, 218

Railroad Commission, and popular election of, 247; ineffective in Alabama, 310; the Georgia Commission a model, 310, 312, 314; petitions for an effective, 312-314; Birmingham Freight Bureau, 312; Montgomery *Advertiser,* 313; convention refuses to create an effective commission, 315-316, 338

Railroads, and $12,000 per mile law (1868), 137n, 196n; two-thirds proviso on state aid (1868), 147; convention of 1875 forbids state, county or city aid to, 177, 188, 190, 194, 195, 196-197, 202-203, 208-209, 211, 216; Reconstruction debt, 180-181, 196-197; repudiation of railroad bond debt, 203-205, 214; regulation of (1875), 209-210; presidency of 1901 convention, 264-265; influence in 1901 convention, 266-267, 279, 308; select electorate (1901), 308; alignment with Black Belt (1901), 310-312, 315, 323, 329, 351, 358; state regulation of (1901), 310-316; their lawyers in 1901 convention, 311-312; pressure on the 1901 convention, 313-314; lobbyists on floor (1901), 313n, 315; state ownership in Georgia, 328; prohibition against state aid to continued (1901), 328; "strangulated" counties, 328n; Black Belt dicate tax article, 329; favor quadrennial sessions, 336; Black Belt dominate 1901 convention, 347; vote on 1901 Constitution, 351

Randolph, John, opposes Yazoo land claims, 21

Randolph, Ryland, editor of the conservative Tuscaloosa *Monitor,* 157

Rapier, James T., Negro in convention of 1867, 117; opposes proscription of whites (1867), 129; against segregation, 135n

Reconstruction, governors held in higher esteem than legislatures during, 197n, 368; prejudice against registration boards, 296; clauses in Constitution omitted (1901), 338; effect on Alabama's constitutions, 197-198, 210, 236, 366-367; restrictions on the legislature, 361

Reconstruction Acts, and the congressional plan, 110, 113n, 125; suffrage, 124; 1867 convention exceeds requirements of, 128, 132, 158; required submission, 151; majority of all registered voters required for ratification, 154, 169; majority not secured, 169; law changed and applied retroactively to Alabama, 171-172; submission of constitutions, 369

Reconstruction debt, and the 1875 convention, 180-181, 194, 196-197, 202-205; Houston fears repudiation, 181; railroads, 196-197; tax limits (1875), 203-205; repudiation of, 203-205, 214, 215n; tax limits (1901), 327

Reese, Henry F., and methods used to elect Jones (1892), 284n; poll tax, 299, 302

Reese, Warren Stone, contests Morgan's election, 220n

Registration, in 1867-1868, 110-111, 113, 169; test oath, 158, 159-160, 162n, 167, 182-183; in 1875, 183; test oath stricken out (1875), 201, 209, 216; boards of (1901), 296, 343, 345

Reid, Samuel J., against 1868 Constitution, 153n

Representation, in Mississippi Territory, 14, 18; Alabama Territory, 25-26, 28; Alabama convention of 1819, 27; white basis for (1819), 36-37, 362; white basis for (1865), 104-105; town and city stricken out (1865), 105n; population basis (1868), 136, 150; 1875 convention, 183, 201-202, 209, 216; Democratic State Convention, 228; Democratic pledges (1898-1899), 251-253; Black Belt fears loss of, 252-253, 307-308, 341n, 343n, 352; convention of 1901, 306-309, 347; committee of 1901 "stacked" in favor of Black Belt, 307n; amending process, 307-308, 369; North Alabama, 347-348. See apportionment

Republicans, Negro suffrage a necessity (1867), 126; moderates vs. radicals (1868), 131; interest in education, 143, 165, 213-214; interest in industry, 148, 210; nominations (1867), 148n; protesting Republicans (1868), 152; supported with Negro votes, 158; strong position of (1868), 162-163; restoration, 166-167; Alabama's electoral vote (1868), 174; objectionable features of 1868 Constitution, 168n; readmission (1868), 171n; decline of, 175, 217, 355n; Alabamians over to (1868-1874), 178; 1875 convention, 177, 178-179, 183, 184-186, 188, 190n, 194, 202, 203, 205, 212; Reconstruction debt (1875), 203, 212, 214; contested elections, 219; "Lily white" and "Black and Tan," 232, 261, 304; 1901 convention, 260-261, 263, 292, 295, 296-297, 343; more interested in investments than Negro (1901), 290-291; oppose 1901 Constitution, 341, 342, 350, 358

Residence requirements, for voting, 35, 201, 364; for office, 36, 38, 138, 195, 199, 209

Retrenchment, and 1875 convention, 177, 180, 190, 198n, 200-201, 202-203, 205, 206-207, 209, 210, 215, 216, 234, 362. See economy

Reynolds, Robert McConnell, Carpetbagger in 1867 convention, 119, 120

Rice, Samuel, and not voting policy (1868), 154n; goes over to Republicans, 177-178; convention of 1875, 188, 190n, 191-194, 211-212

Rider, used in location of capital in 1818 and 1845, 57

Road building, forbidden by state (1875 and 1901), 236, 327-328

Robbins, Gaston A., contested election case, 219n

Robinson, James Jefferson, and Negro suffrage, 222n; imprisonment for debt, 253n

Robinson, W. C., contested election case, 219n

Rogers, John A., and prohibition on state aid, 328

Roosevelt, Theodore, and the Negro, 344

St. Clair, Arthur, governor of the Northwest Territory, 4

St. Paul, Henry, Conservative editor, 157

St. Stephens, capital of Alabama Territory, 23, 37, 55

Saffold, Reuben, delegate (1819), 32, 34; trial of, 48

Saffold, Benjamin F., Scalawag in 1867 convention, 121, 122; segregation, 135; legislators, 138; intermarriage of races, 139n; opposes 1875 Constitution, 221

Samford, Governor William James, in convention of 1875, 191; convention of 1901, 258-259, 270n, 340; death of, 320n, 337n

Sanford, John W. A., fears radical convention of 1890's, 249-250; in 1901 convention, 315, 319

Sargent, Winthrop, governor of Mississippi Territory, 4-5; his code, 4-5; creates Washington County, 6; fears of the executive, 40

Sayre, P. T., and congressional ruthlessness (1868), 174n

Sayre election law, and Populist revolt, 223-225; Australian ballot, 224; disfranchises whites and Negroes, 224-225, 230n, 250

Scalawags, in convention of 1867, 114, 115, 121-124, 127n, 133; segregation, 135-136, 145, 362; intermarriage of races, 139-140, 362; opposition to 1868 Constitution, 149, 151-152

Screws, William Wallace, Conservative editor, 157

Scroggs, William O., and motive for 1901 convention, 268

Seay, Thomas, and a constitutional convention, 240, 249

Secession, and amendments (1859), 75; legislature (1860), 76; immediate secessionists and cooperationists, 76-77, 79, 82, 83; ordinance of secession, 79, 80; no popular vote on, 80, 369; debate on repeal of ordinance of (1865), 98-99, 108; convention of 1875, 184-185, 193-194; clauses against omitted (1901), 338; areas opposing also opposed 1901 Constitution, 351, 363

Secretary of Mississippi Territory, 7-8

Secretary of State, and 1819 Constitution, 40, 69; 1875 Constitution, 199

Sectionalism, in Mississippi Territory, 16-24; Alabama Territory, 25-28; 1819 convention, 33, 37, 44; over the capital, 55-56, 58, 62-63; convention of 1861, 77, 80, 83-84, 89; convention of 1865, 93, 97, 98, 99-101, 104-105, 107-108; convention of 1875, 189; in the 1890's, 228, 238n, 250-255; 1901 convention, 266, 283, 296-297, 306-309, 317-318; vote on 1901 Constitution, 350-352; in Alabama's constitutions, 362, 368-369. See Black Belt, North Alabama, and South Alabama

Segregation, no provisions for, in 1868 Constitution, 135-136, 145, 152, 362; 1875 convention, 201, 206, 209; campaign for ratification (1868), 158, 160

Selma, wants capital, 55, 58, 62

Semmes, Thomas Jenkins, and grandfather clause, 277n

Semple, Henry C., Scalawag in 1867 convention, 122, 128; segregation, 135; defends Alabama's ante bellum constitution, 136; intermarriage of races, 139; feared popular election of judiciary (1868), 141; leader of "protesting" Republicans, 151

Sharkey, William L., and election of judges, 67n

Sheets, Charles C., and submission of Constitution, (1865), 107

Shelley, Charles Miller, opposes 1901 Constitution, 342, 347n, 349-350; the Negro, 343; demands white primary on the Constitution, 347-348; charges 1901 Constitution "counted in" with Black Belt vote, 351

Sheriffs, and 1819 Constitution, 39, 68; succession of (1861), 89; 1901 convention, 337-338, 347; pressure 1901

convention, 337; popular election from 1819, 364
Sherman, John, and readmission, 174
Shugart, John T., and corrupt legislature, 226n
Silsby, John, Carpetbagger in 1867 convention, 119, 120; education, 143, 144
Skaggs, William H., and motive for 1901 convention, 268
Skinner, William, Scalawag in 1867 convention, 122
Slavery, and 1819 Constitution, 42 and n, 43; 1861 convention, 80, 83, 86; 1865 convention, 95-97; 1868 convention, 148n; 1875 convention, 185
Sloan, J. B., opposes registration boards, 296n
Smith, Gregory L., corporation lawyer in 1901 convention, 266, 311; suffrage, 267, 286; select electorate, 291-292; free passes, 314; railroad commission, 315
Smith, John V., president of railroad commission, 259; heads campaign committee for convention call (1901), 259-260, 270n; spokesman for railroads, 312-313
Smith, Otis D., and education, 207n
Smith, Robert T., auditor and supports 1875 Constitution, 212, 215
Smith, William H., and registration (1867), 110-111; industry, 166n; opposes 1875 Constitution, 211-212
Social equality, of whites and Negroes, 140n, 158, 160, 167-168
Soldiers and descendants clauses, see grandfather clause
Solicitors, elective by legislature 1819-1868 and 1875-1901, 69, 200, 210n, 247, 365; elective by people 1868-1875 and after 1901, 142, 338, 344, 365; county solicitors abolished (1875), 183-184, 201
Sollie, Michael, and suffrage, 297
South Alabama, dominates convention of 1861, 77, 79, 85; leaders discredited (1865), 108, 340. See Black Belt, North Alabama, and sectionalism
South Carolina, its constitution denounced, 105; Constitution of 1895, 253-254, 272, 274, 346
Southern Convention, demanded by cooperationists (1861), 80
Southern Rights Party, launched by William L. Yancey, 79
Spanish American War, reunites the sections, 231
Spears, Napoleon Bonaparte, and the Civil War amendments, 292; opposes registration boards, 296n
Special sessions, of the legislature, 69, 195, 197, 366
Specie payments, suspension of (1861), 87; clauses on (1865), 103
Speed, Joseph H., Scalawag in 1867 convention, 122, 124, 128; opposes proscription (1867), 128; segregation, 145; intermarriage of the races, 139n
Spencer, George Eliphaz, against convention of 1875, 178; mentioned, 191n
Springfield, Henry J., Scalawag in convention of 1867, 122n
Stallings, Jesse, opposes 1901 Constitution, 342, 349-350; the Negro, 343n; domination of 1901 convention by railroads and Black Belt, 347
Stanwood, N. D., Carpetbagger in 1867 convention, 119, 120
Statesville, wants capital (1845), 62
Stay laws, and convention of 1867, 148n, 161-162
Steele, John, secretary of Mississippi Territory, 7
Stephens, Alexander H., and the secession convention, 85
Sterrs, Willis, petitions the convention, 303
Stevens, Thaddeus, bitter Radical, 120; provisional government, 173n; readmission bill, 172-173
Stone, Lewis Maxwell, and 1875 convention, 189, 191
Stow, James P., against 1868 Constitution, 151
Submission, of the 1868 Constitution, 151; of the 1875 Constitution, 184-185, 187, 209; of the 1901 Constitution, 255n, 259, 270, 280, 297, 340; of Alabama Constitutions (1819-1901), 361, 369
Suffrage, in the Mississippi Territory, 13-14; 1819 Constitution, 34, 36, 44, 70, 363; foreigners (1865), 106-107; Reconstruction Acts, 124; 1868 Constitution, 124-127, 128 129-130, 131-132, 139, 201, 362; readmission bill (1868), 174, 271n; 1875 Constitution, 184-185, 186, 187, 194-195, 201, 209, 210, 217, 363; dishonest methods prevalent (1875-1901), 217-229, 283-285, 363; proposed tests for voting (1875-1901), 223-224, 247; Sayre law, 224-225; effect of dishonest methods on every phase of life, 226-227; constitutional convention to revise, 230-232, 249-262; understanding clause (1901), 232, 272-273, 275, 280, 287-288, 290, 294-295, 296, 363, 364; education, 238, 240, 317; no white man disfranchisement pledge, 251, 255n,

270-271, 279-280, 364; the committee's dilemma, 267, 271, 279; Knox's opening address on, 268; select electorate, 269-270, 283, 285-286, 347 352-356, 358, 363; plans before committee, 274-278; Birmingham *Age-Herald's* suffrage plan, 274n; residence requirements, 275, 364; petty crimes clauses, 275, 363; property and educational clauses, 276, 297-298, 344, 345, 363, 364; for women, 278-279; majority and minority reports on, 280-282; debates on (1901), 283-302; temporary plan, 283, 285-296, 344, 364; good character clause, 288, 290, 294-295, 296, 344, 345, 363; registration boards, 296-297, 343, 345; permanent plan, 297-302, 344; employment clause, 298, 344, 363; poll tax, 298-302, 363; Boswell Amendment (1946), 298n; foreigners (1901), 305-306; intricate and undemocratic article on (1901), 306, 309, 344; decision made by Black Belt and corporate interests, 308-309, 311, 313, 315; decision effects other decisions, 338, 339; Democratic opposition to 1901 article on, 340-341; campaign for ratification (1901), 342-349; Confederate Army, 345; illiteracy and 1901 Constitution, 353; decline of number of voters and 1901 Constitution, 354-356; more whites than Negroes disfranchised, 358-359; from democratic (1819) to undemocratic (1901), 358-359, 363, 370

Superintendent of education, 144, 149n, 160n, 206-207

Swayne, General Wagner, and Reconstruction, 113n, 131n

Sykes, Francis Winfield, and convention of 1875, 189n, 191

Tait, Senator Charles, patron of Alabama, 19 and n, 22n, 23n, 24, 26-27; for division of Mississippi Territory, 19n, 23n; Alabama Enabling Act, 27

Taxation, and campaign for ratification (1868), 161; local legislation, 182; Reconstruction period, 203; Negro schools (1901), 206, 302, 305, 317-318, 321-324, 339; 1875 Constitution, 212, 214; local taxation for schools, 317, 320-321, 324-325, 348; education (1901), 317-326; rates from 1875-1901, 319; Confederate veterans, 321; article on, dictated by Black Belt and corporations (1901), 329; Constitution of 1901, 329-330

Tax collectors, controversy over (1875), 193n

Tax limits, and Constitution of 1868, 137; 1875 Constitution, 181, 190, 205, 214; repudiation (1875), 181, 202-203, 205, 209; counties, 205, 236, 247, 327; cities and education (1875-1901), 205, 234, 235-240, 247, 250, 327; Democratic pledges, 251, 253, 255n; convention of 1901, 318-320, 329-330, 339, 344; high interest rates, 320, 329; amendments exempting localities from (1901-1955), 330; in Alabama (1868-1901), 361, 366

Taylor, John M., and convention of 1819, 31n, 34, 36n, 37, 39, 43, 70n

Tennessee Valley, mentioned, 20, 48, 299n, 351

Thatcher, George, and bill against slavery in Mississippi Territory, 3n

Thrasher, Max Bennett, and reports on 1901 convention, 263-264, 318, 322

Tillman, Benjamin, and South Carolina convention (1895), 266n; Alabama Suffrage Committee (1901), 275; campaign for ratification (1901), 346

Tilton, Daniel, judge in the Mississippi Territory, 4, 8; resigns, 9

Titus, James, and convention of 1819, 30, 31n, 32n

Tombigee settlements, minority in Mississippi Territory, 16, 20

Tompkins, John R., against 1901 convention, 260n

Toombs, Robert, and railroad regulation, 314

Toulmin, Harry, territorial judge, 8n, 9; quoted, 19; against division of Mississippi Territory, 23; convention of 1819, 32, 36n, 37, 39, 40, 43, 70n; religious freedom, 35

Townes, John Leigh, and 1819 convention, 30, 31n, 32, 37

Treasurer, and Constitution of 1819, 40, 69, 73-74, 75; 1868 Constitution, 140

Treaty of 1795, and organization of Mississippi Territory, 3, 20

Trial of the judges, a creditor vs. debtor issue, 47-48; limited tenure for judges, 48-49

Troy, Daniel S., and fraud in 1894 election, 229n

Truman, Benjamin, and report on Alabama (1865), 91n

Tuscaloosa, and the capital, 51, 55-63

Two-party system, and Negro disfranchisement, 232, 260, 346, 357

Understanding clause, in Mississippi 232, 272-273; 1901 convention, 275, 280, 287-288, 290, 294-295, 296

Underwood, Oscar W., contested election case, 219n, 220-221; on Northern capitalists and disfranchisement, 291n;

heads campaign committee for 1901 Constitution, 341-342, 358; white primary on 1901 Constitution, 348
United States Senate, and biennial session, 75; governor's ineligibility to, 337
University of Alabama, lands for, 29, 41; removal of the capital, 60; Board of Education (1868), 144, 160n; Morrill Act, 145; convention of 1875, 207n; self-perpetuating board (1901), 326-327
Usury law, and interest rates, 31n, 53; Supreme Court decisions, 47, 48
Vagrancy clause, see employment clause
Veto power of the governor, and convention of 1819, 39, 44; 1868 convention, 141; 1875 convention, 199; item veto (1875 and 1901), 200, 337, 366-367, 368
Virginia, and convention of 1901-1902, 277, 340
Voting, by ballot, 36; *viva voce*, 70
Ware, Nathaniel, acting governor of Mississippi Territory, 10
Walker, J. R., Scalawag in 1867 convention, 122n
Walker, John W., and division of Mississippi Territory, 19, 22n; urges Bibb not to resign, 24; dictates Alabama Enabling Act (1819), 26-27, 30n; quoted on George Poindexter, 27; white basis of apportionment, 28n, 36, 37; usury law, 31n, 47n; president of 1819 convention, 33; convention of 1901, 32, 33, 36, 37, 39, 45, 70n
Walker, Leroy Pope, and convention of 1875, 189-190, 211; elected president of 1875 convention, 189
Walker, Richard Wilde, speaks against 1868 Constitution, 153, 161; policy of not voting (1868), 154n; Negro suffrage (1868), 158; prefers continued military rule (1868), 158n; suffrage committee (1901), 267
Walker, Thomas A., speaks against 1868 Constitution, 153n
Walker, W. A., and intermarriage of the races, 139n
Washington, Booker T., and Negro suffrage, 226n, 303-304, 343n; should be disfranchised, 260n, 305; petitions the convention (1901), 302; taxes paid by Negroes, 323; Negro education, 302-304, 324; the federal judgeship of Thomas G. Jones, 344n
Washington County, created (1798), 6; first judge in, 8
Watkins, John, delegate to convention of 1819, 34
Watts, Thomas Henry, and manipulation of Negro votes, 284; against more severe tax limits, 319-320
Watts, Thomas Hill, leader of secessionists, 79; fears a convention would be radical (1890's), 249-250; fears white disfranchisement, 250
Weakley, John B., and committee on municipal corporations (1901), 266, 330
Weakley, Samuel Davies, and objectives of 1875 Constitution, 234; frequent elections, 244n
Weatherly, James, and the suffrage, 267, 284-285; railroad lawyer in 1901 convention, 311
Webb, John D., and 1861 Constitution, 86
Webb, William P., and the 1865 Constitution, 94, 103
Weeks, Edward T., and the voting grandfather clause, 277n
Wesley, John, called a Carpetbagger, 164n
West, Cato, Republican opponent of Sargent, 4-5; territorial secretary and acting governor, 5, 8
West Florida, part of added to Mississippi Territory, 3, 18
Wetumpka, wants capital (1845), 58, 62
Whatley, W. W., contested election case of, 219n
Wheelan, Benjamin L., Scalawag in 1867 convention, 122, 124, 128
Wheeler, Joseph, and reunion of the sections, 231
Whigs, favor "federal ratio" basis of apportionment, 71n; old Whigs and 1865, 1867, and 1875 conventions, 93, 94, 95, 122n, 123n, 124, 152, 212-213
White, Alexander, and 1865 convention, 95; goes over to Republican party, 95n, 177-178; speaks against 1868 Constitution, 153; policy of not voting (1868), 154n; leader of Republicans (1875), 178, 190n
White, Frank Shelley, and Alabama equal to Massachusetts, 231; 1901 convention, 258, 265n, 275n; the suffrage (1901), 267, 275n, 281, 341n; early death of grandfather clause, 294n, 295; for an effective railroad commission, 315
White, Judge John, trial of, 48
White primary, demanded in 1892, 244-245; suffrage plans (1901), 274n, 357n; the U. S. Supreme Court, 244n, 357; demanded on 1901 Constitution, 347-348

Whites, and proscription of 1867-1868, 124, 126, 158, 159 162n, 362; no white man disfranchised pledge, 251, 255n, 270-271, 279-280, 364, 370; inherited capacity of, to govern, 285, 289-290; disfranchisement of (1901), 293, 346, 353-356, 358-359

White supremacy, in 1874 election, 175, 362; 1875 convention, 177, 211-212; under 1875 Constitution, 218, 222n, 225-226, 227, 228; Sayre election law, 225; 1901 convention, 259-260, 268, 285, 292, 309, 316; Democratic party, 284; poll tax, 302; in ratification campaign (1901), 342, 346, 348n; Roosevelt's Booker T. Washington dinner, 344

Wilhite, John W., Scalawag in 1867 convention, 122n

Willard, Frances, mentioned, 278n

Williams, Gesner, and Black Belt use of Negro vote, 297; bitter attitude toward the Negro, 305

Williams, Marmaduke, in convention of 1819, 32, 36n, 39; constitutional convention (1839), 56-57

Williams, Robert, governor of Mississippi Territory, 5-6, 9; dissolution of the Council, 11; fear of the executive branch, 39n, 40

Wilson, Henry, counsels moderation (1867), 131n

Winston, John W., in convention of 1865, 92n

Winston, Robert, and state aid to railroads, 196n

Wiregrass, and opposition to the 1901 Constitution, 260, 261, 297, 299, 363; poor whites in, 289-290

Woman suffrage, and 1901 convention, 278-279

Women's clubs, Alabama Federation of, and education, 239, 324n

Women's rights, and the 1868 Constitution, 147-148, 149-150, 166; 1875 Constitution, 186, 208, 210, 216, 362

Writ of habeas corpus, and the 1875 Constitution, 193, 216, 367

Yancey, William L., makes majority report on secession, 79; dominates convention of 1861, 79, 83n; favors United States Constitution for Confederate States, 79, 82; an all powerful convention, 131n; mentioned, 96

Yazoo Act, and George Mathews, 4n; land titles in Mississippi Territory, 20, 21-22; mentioned, 53

Yordy, Benjamin, Carpetbagger in 1867 convention, 119, 120; education, 143

THE JAMES SPRUNT STUDIES IN HISTORY AND POLITICAL SCIENCE

(*Continued from inside front cover*)

Vol. 19, No. 2. Studies in Hispanic-American History. Edited by W. W. Pierson, Jr.

Vol. 20, No. 1. North Carolina Newspapers Before 1790. By Charles Christopher Crittenden.

Vol. 20, No. 2. The James A. Graham Papers, 1861-1884. Edited by H. M. Wagstaff.

Vol. 21, Nos. 1 and 2. The Democratic Party in Ante-Bellum North Carolina, 1835-1861. By Clarence Clifford Norton.

Vol. 22, Nos. 1 and 2. Minutes of the North Carolina Manumission Society, 1816-1834. Edited by H. M. Wagstaff.

Vol. 23, No. 1. The Presidential Election of 1824 in North Carolina. By Albert Ray Newsome.

Vol. 23, No. 2. The Secession Movement in North Carolina. By Joseph Carlyle Sitterson.

Vol. 24, No. 1. Jeffersonian Democracy in South Carolina. By John Harold Wolfe.

Vol. 24, No. 2. Guide to the Manuscripts in the Southern Historical Collection of the University of North Carolina.

Vol. 25, No. 1. North Carolina Boundary Disputes Involving Her Southern Line. By Marvin L. Skaggs.

Vol. 25, No. 2. Ante-Bellum South Carolina: A Social and Cultural History. By Rosser H. Taylor,

Vol. 26, No. 1. The Prohibition Movement in Alabama, 1702 to 1943. By James Benson Sellers.

Volume 27. Prohibition in North Carolina, 1715-1945. By Daniel Jay Whitener.

Volume 28. The Negro in Mississippi, 1865-1890. By Vernon Lane Wharton.

Volume 29. The Whig Party in Georgia, 1825-1853. By Paul Murray.

Volume 30. The South in Action: A Sectional Crusade Against Freight Rate Discrimination. By Robert A. Lively.

Volume 31. Essays in Southern History. Edited by Fletcher Melvin Green.

Volume 32. South Carolina Goes to War. By Charles Edward Cauthen.

Volume 33. Revolutionary Justice: A Study of the Organization, Personnel, and Procedure of the Paris Tribunal, 1793-1795. By James Logan Godfrey.

Volume 34. The Political Liberalism of the New York *Nation*, 1865-1932. By Alan Pendleton Grimes.

Volume 35. War Labor Boards in the Field. By Allan R. Richards.

Volume 36. The Raleigh Register, 1799-1863. By Robert Neal Elliott, Jr.

Volume 37. Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism. By Malcolm Cook McMillan.

n ICSep 55